

The pending measure, which I will refer to as the "Compromise Agreement," is the final version of an omnibus bill. This Compromise Agreement would improve a variety of veterans' benefits, most significantly for the survivors of those who lose their lives on active duty, or who die of their service-connected conditions. It is entirely appropriate that, at a time when we have called our servicemembers into harm's way, we should extend not only our sympathies but critical assistance to the families left behind by those who have made the ultimate sacrifice.

I will briefly highlight some of the most important provisions, and refer my colleagues seeking more detail to the Joint Explanatory Statement accompanying the bill. I thank Chairman ARLEN SPECTER and his staff for their efforts on behalf of our nation's veterans, and my colleagues in the House for working with our committee staffs to craft this agreement.

While this Compromise Agreement enhances many veterans' benefits, it focuses particularly on meeting the needs of survivors. I am gratified that Congress plans to increase the rate of educational benefits for survivors and dependents of veterans. This bill would raise education benefits by 13.4 percent over current levels—to \$788 per month from \$695 for full-time study—creating parity with the benefits that the Nation provides to active-duty servicemembers. Family members who have already faced the loss of a father, mother, husband, or wife in service, or who have helped a servicemember endure total disability, should not have to face limited educational opportunities and fragile futures due to resulting financial hardships.

I am very pleased that we have continued to build upon legislation of the past two years to assist the surviving spouses of servicemembers. In 2001, Congress passed legislation to allow survivors of severely disabled veterans to continue receiving VA healthcare coverage through the program called CHAMPVA after age 65. Congress extended this coverage last year, allowing eligible surviving spouses of veterans who died from service-connected disabilities or in the line of duty to retain their eligibility for CHAMPVA benefits even if they remarried after age 55. This year, the committees have agreed to allow the surviving spouses to retain survivors' benefits—Dependency and Indemnity Compensation, education allowance and home loan—if they remarry after the age of 57, placing these spouses on the same footing as those in other Federal survivorship programs.

The committees were also mindful of those who must live with the possible health consequences of a parent's service. Recent scientific evidence has suggested an association between exposure to dioxin, a toxic chemical found in the herbicide Agent Orange, and an increased risk of the birth defect spina bifida in children born to those ex-

posed. In 1996, Congress authorized VA to provide benefits to children with spina bifida whose fathers or mothers served in the Republic of Vietnam and might have been exposed to Agent Orange. The Compromise Agreement would extend these same benefits to affected children whose parents served in or near the Korean Demilitarized Zone during the Vietnam era, where Agent Orange was also used as a defoliant.

I am pleased that the Compromise Agreement also addresses the enduring, and sometimes invisible, scars of war. Recognizing the long-term effects of prolonged malnutrition and confinement, current law specifies a list of 15 disabilities that VA presumes are related to military service of former prisoners of war who were held captive 30 days or more. This legislation would eliminate the 30-day requirement for certain physical and mental disorders that could result from as little as a day of captivity. It would also add cirrhosis of the liver to the list of presumptively service-connected disabilities for those former POWs who were held captive for at least 30 days, as peer-reviewed studies have shown that former POWs have a higher incidence of this debilitating disease.

Another group of veterans who struggle with potential long-term health consequences are those who were exposed to significant doses of ionizing radiation, particularly in post-war Japan and during subsequent nuclear testing. Nearly 20 years ago, Congress mandated that veterans who suffered from illnesses they believed were caused by such radiation could request that VA "reconstruct" the actual dose of radiation that they received during service. A panel of experts convened by the National Academy of Sciences reported that the contractor-operated program established by the VA to produce this data for veterans suffered from a shockingly cavalier approach to quality assurance, resulting in data that failed to meet the standards assumed by both VA and veterans. The Compromise Agreement would require VA and DOD to establish an advisory board to oversee this dose reconstruction program's mission, procedures, and administration to ensure that it collects and interprets data adequately and fairly.

Congress required the Air Force to conduct a long-term epidemiological study of the veterans of Operation Ranch Hand, the unit responsible for aerial spraying of herbicides during the Vietnam War. This study is about to conclude, and experts agree that both samples and data could still provide key data for many unanswered questions. The Compromise Agreement would direct VA to enter into an agreement with the National Academy of Sciences to advise whether the study should be continued, describe the steps that would be involved in doing so, and evaluate the advisability of making laboratory specimens from the study available for independent research.

Finally, the Compromise Agreement would ensure that the core funding for the Medical Follow-Up Agency (MFUA) would be extended for 10 more years. MFUA uses this funding to update, maintain, and improve long-term epidemiological studies of military and veterans' populations. Congress, VA, military, and independent scientists have relied on MFUA data since World War II to evaluate whether specific exposures might have long-term health effects that suggest a need for benefits, new treatments, or further research.

Together, all of these provisions demonstrate that our nation will continue its commitment to those veterans who carry the burdens of the battlefield—whether obvious or invisible—long after the end of the fight.

In conclusion, I want to thank Senator SPECTER and his benefits staff for their work on this comprehensive bill, specifically Bill Tuerk, Jon Towers and Chris McNamee, as well as my benefits staff—Mary Schoelen, Tandy Barrett, Ted Pusey, Amanda Krohn, and Faiz Shakir, along with Julie Fischer, who recently left the committee, and Patrick Stone, who has recently joined it. I urge my colleagues to support this important piece of legislation for our Nation's veterans and their families.

Mr. THOMAS. Madam President, I ask unanimous consent that the substitute amendment which is at the desk be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2205) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (H.R. 2297), as amended, was read the third time and passed.

Mr. THOMAS. I yield the floor.

ENERGY POLICY ACT OF 2003— CONFERENCE REPORT—Continued

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Illinois.

Mr. DURBIN. Mr. President, what is the order of the business before the Senate?

The PRESIDING OFFICER. The Senator is recognized for 30 minutes on the conference report.

Mr. DURBIN. Mr. President, I ask unanimous consent that period of time be extended to 45 minutes, if there is no objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DURBIN. Thank you, Mr. President.

This is a bill that has been before Congress for quite some time. It is a bill that relates to America's energy needs. It certainly is one that is timely. Our energy supplies and use of energy are critical to the state of our economy and its growth.

This bill was first proposed by the Bush administration under the leadership of Vice President CHENEY. Most people followed it in the news because Vice President CHENEY called together a task force to write the administration's energy policy. When he was asked to identify who was in the room, the people who were involved in the task force, he refused. Despite the pleas of Members of Congress and requests for that information about the origin and creation of this energy policy, the Vice President basically said he was not going to disclose the identity of those who were part of the energy task force.

The General Accounting Office took the Vice President to court and the Vice President prevailed. He was allowed to conceal the names and identities of those who were on the energy task force. So this idea of an energy policy was conceived in secret.

Then there were lengthy debates on the floor of the Senate and House about Energy bills, both during the period when the Democrats were in control of the Senate and the period with Republicans in control. We spent many, many days going through Energy bill options and amendments, voting on them, and moving forward. The net result of it was we produced a Senate Energy bill which was sent to conference.

Conference committees, as defined under our Constitution, and by the practice and precedent of the Senate, usually involve both political parties sitting down, and the House and Senate conferees trying to work out some agreement or some compromise.

As has been the case more recently than not, this conference committee did not follow that standard. The conference committee met primarily with Republican Members only, and primarily in secret.

So ultimately the work product of this energy conversation or energy analysis that we have before us today was not only conceived in secrecy, it was produced in secrecy.

So today we have a great epiphany, a great opening, a great revelation. The bill is finally before us, and we have a chance to look at this bill, which was brought together with special interest groups and the Vice President at the outset, and which was hammered out in a conference committee with those same special interest groups.

Having considered the origin of this bill, and its maturation process, it is no surprise that this bill is heavily larded with giveaways to the energy industry. In fact, if you go through this bill you will find two things that stand out. The first relates to a question which we have to face as a nation: Is it possible for us to have a sound energy policy which allows for economic growth and sustains our standard of living without endangering our environment?

I think the answer to that is yes, and I think we have proven that it can hap-

pen. We have seen an expansion of the American economy over the past several decades while we have reduced pollution in our air and water. That is a positive. It shows we are thinking ahead, that we are not trying to enjoy the benefit of the moment with energy as an expense which our children will pay for.

But, sadly, this bill, by its contents, comes to an opposite conclusion. Because this bill finds, first and foremost, that in order to pursue the administration's energy policy, and the energy policy of a Republican majority in Congress, we have to basically sacrifice our environment. I think that is a horrible conclusion. I find it totally unacceptable, and it is the reason I stand today in opposition to this bill.

Secondly, aside from the question of whether we can have a sound energy policy and a safe environment, we are challenged with this question: Can you promote in America the energy we need for this generation and future generations without providing generous, lavish subsidies to private corporations?

Now, this morning, one of my colleagues from Oregon, on the Republican side, came to the floor and was critical of Governor Dean of Vermont for saying yesterday that we had to consider reregulation in America. This Senate critic said that is exactly what we do not need. We do not need Government regulation in America.

His argument was—and the traditional Republican argument is—let the free market work its will. Well, that, in the abstract, sounds like good medicine, but in reality it is far from the truth.

The market worked its will with Enron. The market has worked its will with the scandals involving mutual funds. The market is working its will every day when it comes to the cost of health insurance to businesses and families across America.

As we look at how the market has worked its will, it is clear the results are unacceptable. So the question before us in the Energy bill is, Can we rely on a free market, then, to develop sources of energy in America?

The answer from this bill is no. The answer from this bill is that the Government must inject itself into the energy sector of our economy and make substantial subsidies to certain elements in the economy in order for America to meet its energy needs. I will outline some of those subsidies in a moment.

So the two conclusions from this Energy bill are that America's energy supply and its growth are inconsistent with a safe environment; and, secondly, that giving the free market its rein, it will not produce the energy that we need in the future. Instead, we have to generously subsidize energy markets.

Now, that is a lot different than what you have heard from the administration. They have talked about balance and they have talked about a forward-

looking energy policy. But I will tell you, when you look at the specifics in this bill, it is clear that it is not balanced.

It is sad to report that this bill, as it is written, has turned out to be a piece of legislation which I believe this Congress should reject. This energy policy that is being promoted in this bill is a gush of giveaways to corporate special interests that is masquerading as an energy policy.

There is a way out of this embarrassment for the Senate. There is a way to come up with an energy policy that works. That way, of course, is to stop this bill and to ask our friends on the important committees dealing with energy to go back to work, go back to work to deliver a bill which, frankly, will be bipartisan, a bill which will be balanced, a bill that will not sacrifice the environment for energy, and a bill which would not be the gush of giveaways this bill has turned out to be.

Let me tell you some of the specifics included in this Energy bill when it comes to the environment, specifics that tell the story about how what was conceived as an Energy bill turned out to be the worst piece of environmental legislation that I have seen in the Senate.

Among the provisions in this bill are the following: It allows more smog pollution for longer than the current Clean Air Act authorizes. Under the existing act, areas that have unhealthy air are required to reduce ozone-forming smog pollution by a strict statutory deadline. If these areas fail to meet the deadline, they are given more time to clean up, but must adopt more rigorous air pollution control measures. The bill attempts to allow more polluted areas more time to clean up without having to implement stronger air pollution controls, placing a significant burden on States and communities downwind from the urban areas.

This bill exempts all oil and gas construction activities including roads, drill pads, pipeline corridors, refineries, and compressor stations from having to obtain a permit controlling polluted storm water runoff as currently required under the Clean Water Act. So in these first two provisions, this bill violates the Clean Air Act and the Clean Water Act. It delays pollution cleanup in southwestern Michigan for 2 years while the EPA conducts a study, dramatically increases air pollution and global warming with huge new incentives, claims to promote clean coal, which I support, but inhibits its development by disqualifying federally funded clean coal projects as best available control technologies; threatens drinking water sources by exempting from the Safe Drinking Water Act regulation the underground injection of chemicals during oil and gas development.

Do you remember the squabble we had here in the Senate about arsenic in drinking water and whether or not it

was safe, and how the Bush administration finally backed off of weakening regulations that would protect us from arsenic in drinking water? This so-called Energy bill is going to increase the danger in our drinking water by exempting from coverage by that act the underground injection of chemicals during oil and gas development. There is a whole section on MTBE, which I will speak to specifically. It encourages the mixture of hazardous waste in cement and concrete products as an alternative to safe disposal in permitted hazardous waste landfills. The list goes on and on and on.

When it comes to our public lands, this bill allows the Interior Secretary, by Secretarial order, to designate utility and pipeline corridors across public lands owned by Americans without any seeking public input through a land use planning process. It authorizes the leasing of the national petroleum reserve in Alaska for oil and gas production without protection for wildlife. It allows the Secretary to waive royalties, which means payments to taxpayers for those who are drilling for oil and gas on the lands that we own as Americans. It allows the Secretary to waive royalties so these companies can drill on our public lands for free.

The list continues. The list is overwhelming. In each and every page—and there are five of them—you will find 10 or 20 examples of environmental degradation, abandonment of environmental standards, endangerment of the air that we breathe and the water we drink. For what? So that someone can make a dollar. That is what it is all about. It is about profit taking at the expense of public health. That is what this Energy bill does.

Did anyone ever announce at the outset that was our goal? Did anyone ever conceive during the debate that what we were trying to do was to provide some more energy at the expense of the environment and at the expense of public health? That is exactly what this bill does.

Before I get into the MTBE issue, which I think is possibly one of the worst I have seen in the time I have served in Congress, let me tell you what this bill fails to do. What is the No. 1 use of oil that we import into the United States today? We use it to fuel our cars and trucks, of course. Of course, a lot of us own quite a few of them. And we know as well that if these cars and trucks are not fuel efficient, they will burn more gas and require us to import more oil. So if you want to have an honest discussion about energy security in America, would you not be pursuing goals which would reduce our dependence on foreign oil? Would you not want to find ways that America can wean itself away from its dependence on Saudi Arabia and its oil sources? Shouldn't that be front and center the main topic in our energy policy? Well, everybody I have spoken to in my State agrees, of course, that is where you should start the energy discussion.

You can search this bill, 1,400 pages or more, and not find a word that gives you comfort that we as a nation will even seriously consider improving the fuel efficiency of the cars and trucks we drive. Why? Because the big three in Detroit—General Motors, Ford, and Chrysler—have said they are not capable of producing more fuel-efficient cars to compete with those that are being imported from Japan. They have convinced the majority in the Senate—I know because I offered an amendment to improve fuel efficiency—that America is technically incapable of competing when it comes to fuel-efficient cars. That is such a sad commentary. It is one which I reject.

Let me tell you what fuel efficiency means for us. First, a little history: The year was 1975. Gas lines were long. People were concerned about the availability of energy in America. An argument was made that we had to do something about the efficiency of the cars and trucks we drive. Of course, there are two ways to achieve it: One is to raise the price of gasoline. If the price of gasoline at the pump doubled tomorrow, every American family would start asking how many miles a gallon do I get from this hog? Well, I don't want to see that happen, nor do most Americans. That imposes new financial burdens on families and small businesses and, frankly, is inflationary.

But there is another one. In 1975 Congress said: We are going to mandate doubling the fuel efficiency of cars and trucks. It is going to be a Federal mandate. It has to happen.

The automobile manufacturers in Detroit said: It can't be done. It is technically not feasible for us to double over 10 years the fuel efficiency of our cars. Secondly, those cars are going to be so small, they are going to be unsafe. Third, you are just playing into the hands of foreign automobile producers who will beat us to the punch.

Thankfully, Congress ignored them and passed a law. In a matter of 10 years, fuel efficiency went from about 14 miles a gallon fleet average to 27.5 miles a gallon. In a 10-year period of time, we virtually doubled the fuel efficiency of our cars, reducing our dependence on foreign oil.

What have we done since 1985, since we reached 27.5 miles a gallon? Nothing, except drive larger, less fuel-efficient vehicles, import more oil from overseas, and pollute our air even more in America.

What has Congress done? Absolutely nothing. This bill is silent on the issue of fuel efficiency. The Energy bill for America's energy policy is silent when it comes to fuel efficiency.

Let me correct myself. It isn't silent. It creates a new loophole that will be added to the process which will make it even more difficult in the future for us to even consider increasing fuel efficiency.

I offered an amendment which said, what if we went to 40 miles a gallon from 27.5 miles a gallon by 2015. Let's

have 12 years. Look at the dramatic savings we would have in the barrels of oil that are consumed.

This is what drilling in the Arctic National Wildlife Refuge is worth, this tiny little line down here. But just by increasing the fuel efficiency of our cars and trucks, we could answer a major part of the challenge of America's energy future. This bill sadly does nothing.

In addition, this bill excludes a renewable portfolio standard. It does not in any way encourage new ways to use energy from renewable fuels in a way that could make a sizable difference. I think we ought to be embarrassed by this. What an embarrassment it was to read in the Washington Post yesterday that China, a developing nation, now has higher fuel efficiency standards and fuel economy standards than the United States. Can you believe it? Can you believe that this growing economy, just developing, has decided they see the future, and the future is in more fuel-efficient cars and less dependence on foreign oil; and the United States, this great economic engine that we run, doesn't see the same? As a consequence, we find ourselves in a position where this bill is silent when it comes to fuel efficiency.

I think that is a terrible deficiency in this legislation. I cannot imagine it can be taken seriously in a conversation about America's energy policy. We know full well that we use a lot of oil. According to this chart, the global consumption of oil per capita in 1999, in gallons per day, the United States is 3; other industrialized countries, 1½; and the rest of the world less than ½. The U.S. continues to consume more oil than other countries.

The gasoline savings we realized going from 14 miles a gallon in 1970 to 28 miles a gallon in 1999 reduced, by 3.7 billion gallons, the gasoline we consumed in a given year. Less gasoline, less polluted oil, less pollution. This bill is silent on that issue, and that is unfortunate.

Let me speak for a minute to what I consider the single most outrageous part of this legislation.

Mr. President, I have been in Congress a few years. I have noticed that at the end of a session strange things happen. Some of these strange things involve massive giveaways to individual companies or interest groups. Over the years I have paraded out my personal award for this activity. I call it the moonlight mackerel award. It is given to that effort or amendment or bill in the closing days of the session which is the most outrageous. It goes back to a quote where someone said that a certain thing would shine and stink like a mackerel in the moonlight.

The one I am about to describe, I believe, may retire the trophy, the moonlight mackerel trophy, which has been

coveted by special interest groups forever. Frankly, it is now being challenged by what may be the worst provision in this Energy bill. It is a provision that led me to oppose the bill. Even though I have had people from Illinois call me who support this bill and genuinely want to see it pass, I have told them that as long as this provision is in the bill, there is no way I will support it. I think it is that bad and that embarrassing.

The provision is on methyl tertiary-butyl ether, or MTBE. MTBE was an additive to gasoline so that engines ran a little smoother, called an oxygenate. Oil companies started adding that to our fuel and selling it across America. There are alternatives. They could have used ethanol, for example; but they said, no, we will use MTBE. So they used this MTBE additive, this compound, in gasoline and then discovered something. They discovered it a long time ago. This MTBE compound is dangerous. MTBE, when it leached out of underground storage tanks, could get into the groundwater and into the public water supply.

If you took out a boat on a lake with MTBE mixed with gasoline and it discharged into the lake, it could contaminate the lake.

The contamination went beyond the foul-smelling additive itself to raise serious public health questions. According to the GAO, it has been detected in groundwater and drinking water all across the U.S. It is classified as a potential human carcinogen, a cause of cancer. At a level of 2 parts per billion, MTBE produces a harsh chemical odor that renders tap water undrinkable. Removing MTBE is difficult and costly. Water utilities must either blend contaminated water with clean sources to dilute the MTBE to acceptable levels, install systems to remove chemicals, or abandon certain water sources altogether.

The most effective argument of those who have been harmed and seek a day in court is a defective product argument. The fact is that the oil industry knew MTBE was, in fact, dangerous and they continued to use it and sell it, despite the danger it posed to public health. That was the basis for a lawsuit filed in California near Lake Tahoe, where the oil companies eventually paid \$60 million, conceding their guilt.

The producers of MTBE knew the problems they had. I believe the producers of the MTBE should be held responsible. In fact, in one powerpoint presentation, the producers cynically dubbed MTBE as "most things biodegrade easier." They were making a joke of the fact that MTBE would stand for those initials, realizing that it did not biodegrade easily. It was a persistent, troublesome, and dangerous element, which stayed for a long time.

Who should pay for the cleanup for MTBE? According to this bill, not the polluters, not the producers, but the taxpayers of America. That is the conclusion in this bill. This bill provides

the single most expensive immunity to litigation of any bill that I have ever seen before Congress. It says the producers of MTBE cannot be held accountable in product liability legislation for what they knew to be a dangerous product, and it doesn't stop there. It is retroactive, saying that lawsuits already being prosecuted in States across America cannot be pursued to verdict or settlement.

Think about that for a minute. This is the single biggest giveaway to a special interest group that I have ever seen in the time I have served in Congress. This jury in Tahoe, considering the contamination near the Lake Tahoe area, found that gasoline with MTBE is a defective product because of the risk of this additive, and because the oil companies failed to warn consumers of the risk to the environment and drinking water. The jury found "clear and convincing evidence" that the producer of MTBE acted with malice, and they are going to have a field day and a holiday with this Energy bill. They were found to have acted with malice in selling this product that endangered the lives of the people in the community.

MTBE producers know they are vulnerable to these lawsuits. If you are vulnerable for wrongdoing, if you created a product that endangers thousands of Americans, where should you turn? Come to Congress. Come to Capitol Hill. Come to mama.

That is what happened with this conference committee. They came to this conference committee and the conference committee delivered. This conference committee let the MTBE producers and oil companies off the hook. About three-fourths of the producers are located in Texas and Louisiana, and it has been the Congressmen from these States who have pushed this provision.

Let me tell you what it means to Illinois. We are hit, but not as hard as some. Only 26 to 29 communities in my State of Illinois have drinking water currently contaminated with MTBE, affecting over 200,000 people where I live.

Currently, there are four lawsuits in Illinois that this waiver in this bill would eliminate—in the communities of Crystal Lake, Island Lake, Village of Alton, and Woodstock. The lawsuits currently underway will be eliminated by the language in this bill. So where does that leave the community with the contaminated water supply? Where does it leave the families who cannot live in their homes because of this MTBE contamination? It leaves them, frankly, at the mercy of those who would turn and give them money. Should you not hold the polluters accountable? Not according to this bill. This lets the polluters off the hook.

The community of East Alton, with a population of 6,500 people, was faced with a MTBE plume that threatened its drinking water supply. A million dollars was spent to clean it up, and

the community went to court to recover the cost of that million-dollar expenditure.

In the town of Island Lake, individual wells were affected.

In Kankakee County, Oakdale Acres subdivision and two other small subdivisions were forced to shut down their groundwater systems and connect to a nearby community's public water supply, after a pipeline rupture contaminated the subdivision's aquifer.

Roanoke, with a 2,000 population—like you might find in Nebraska, New Hampshire, and all across America—has had to use one of their wells as a hydraulic containment area with treatment and discharge to surface water in order to protect their well field from an MTBE plume with a concentration exceeding 1,000 parts per billion.

These communities and others deserve a fair and reasonable hearing. They deserve a judge and jury. They deserve their day in court. This Energy bill locks the courthouse door and says to these communities that they will not have their day in court.

With the defective product liability waiver which reaches back to September 5, 2003, this conference report meddles with the courts at the request of the oil companies. At least 35 States have problems such as I have just described in Illinois.

By 1986, the oil industry was adding 54,000 barrels of MTBE to gasoline every single day. By 1991, the number was up to 100,000 barrels of MTBE per day. Yet oil company studies conducted as early as 1980 showed that the oil industry knew that MTBE contaminated ground water virtually everywhere it was used. There was a \$60 million settlement in Lake Tahoe.

Some have analyzed this and said the reason this provision is in here is if the oil companies were going to accept the expansion of ethanol, they had to be given something.

I have been a strong supporter of ethanol for over 20 years, and I will continue to be, but if that is what it is all about, if the only way to increase ethanol is to provide this kind of immunity from liability for the producers of MTBE, it is too high a price to pay, as far as this Senator is concerned.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 16½ minutes.

Mr. DURBIN. I thank the Chair.

Let me say another word about this MTBE. In these lawsuits that have been filed, it has been shown that these oil companies knew what they were getting into. You would think at some point in time they would have at the Federal level banned MTBE perhaps long ago. It took State leadership for this to happen. In California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, South Dakota, and the State of Washington, they took the initiative, when the Federal Government

didn't move quickly, to ban MTBE. They know what it is all about, and they understand the damage that has been done to their communities.

In the State of New York, in Liberty, after fighting for 11 years because they found MTBE in their local well water, they finally got the State to move forward to establish new standards for public water supplies after a lot of families there had serious health problems. That is just a story that is going to be repeated all over, not just in New York.

In New Hampshire last spring, they filed a string of lawsuits against 22 oil companies. If these lawsuits are being brought on product liability theories—the ones that are the most successful—they will be thrown out by this legislation. These lawsuits will be eliminated. The businesses, the families, the individuals who have been damaged by this deadly additive are going to lose their day in court because we are going to mandate it in this legislation.

How does this enhance the energy security of America? It certainly adds to the bottom line of profitability of the oil companies which would be held responsible for their misconduct, I will agree with that. But is it just? Is it fair? Is it something we should be doing, giving blanket immunity to companies that, by their wrongdoing, endanger the health of families and individuals across America?

In the State of New Hampshire, the State sued 22 major oil companies on October 6 because of MTBE. According to Governor Craig Benson, they claim the oil companies have added increasing amounts of MTBE to the gasoline, even though they knew years ago it would contaminate water supplies.

The General Accounting Office told Congress what this was all about. In the year 2002, John Stevenson, Director of GAO's Natural Resources and Environmental Division, testified before a House subcommittee and said that MTBE created health risks which he described as follows:

Such health risks can range from nausea to kidney or liver damage or even cancer.

He pointed out that a school in Roselawn, IN, discovered students had been drinking water with nearly 10 times the Federal recommended level of MTBE. Officials are trying to determine if the additive came from a nearby tank and whether it is causing the students to have an inordinate number of nosebleeds. These are real health issues, real health problems.

Mr. President, "60 Minutes" on January 16, 2000, brought the MTBE issue to the attention of America. They noted at the time there was contamination in some 49 States—as I said earlier, about 35 that we can directly link MTBE to contamination of water supplies. They estimate that MTBE is a contaminant in 35 percent of the Nation's urban wells. A single cupful of MTBE in a 5 million gallon reservoir is sufficient to render the water in that reservoir undrinkable.

In 1995, an Italian study on the effects of MTBE showed high doses of this chemical caused three types of cancer: lymphoma, leukemia, and testicular cancer. We are saying to those hapless innocent victims of MTBE contamination of their water supply that we are closing the courthouse door for their recovery in product liability suits. How in the world can we do this in good conscience? How can we turn our back on these innocent victims across America, these communities forced to pay millions of dollars for the wrongdoing of oil companies, and give them this sort of special giveaway and special break?

I, frankly, don't understand how we can. I don't understand how what started out to be an Energy bill has become something much different. I don't know how a bill which was supposed to give us energy security could be so damaging to our environment in so many specific ways. I don't know how a bill that was supposed to be giving Americans peace of mind about their energy future instead in community after community and in State after State is going to close the courthouse doors to holding oil companies accountable for their misconduct.

This is the worst. This retires the trophy in the Moonlight Mackerel Award. I cannot recall a time when we have gone this far, and that is saying something. There is a way out of our embarrassment, and it is a way I would encourage colleagues on both sides of the aisle to take very seriously. We will have an opportunity on a cloture motion soon to decide whether this bill goes forward. If we can gather 41 Senators to oppose it from going forward, then the bill will stop and be returned to conference or perhaps back to committee for further consideration.

I think that is the way it should be, and the sooner we do that the better. If enough of my Republican colleagues will step forward with Democratic colleagues, we can make that difference.

In case you think this is a partisan issue, the Wall Street Journal, which is not known to be friendly to many Democrats, including this one, went after this bill and criticized it on Tuesday, November 18, calling this Energy bill one of the great logrolling exercises in recent congressional history. In the words of the Wall Street Journal:

The Republican leadership has greased more wheels than a NASCAR pit crew.

They go on to say:

The bill's total price tag of new outlays is a tidy \$72 billion according to Taxpayers for Common Sense. That's not counting \$23 billion in tax giveaways to nuclear, oil, gas, and coal concerns all over the country, 3 times more than the President said he would accept.

The Washington Post, November 18:

... producers of MTBE, another gasoline additive that is believed to pollute drinking water, have not only been exempted from product liability, they also have been retroactively exempted, a change that cancels out lawsuits ...

Across America.

They go on to say:

This bill does not, for example, provide a clear direction for the development of the electricity grid ... it does not encourage the U.S. car industry to manufacture vehicles that consume less fuel ... and it does not significantly encourage energy conservation.

The New York Times says this bill is: ... hardly surprising in a bill that had its genesis partly in Vice President Dick Cheney's secret task force.

It creates:

... exemptions for the Clean Water Act, protection against lawsuits for fouling underground water and an accelerated process for leasing and drilling in sensitive areas at the expense of environmental reviews and public participation.

The list goes on. The Anchorage Alaska newspaper calls the Energy bill a setback.

The Atlanta Journal Constitution, quoting Keith Ashdown of Taxpayers for Common Sense, says:

[T]he legislation is "a smorgasbord of subsidies to big companies masquerading as energy policy."

The Atlanta Journal Constitution concludes in its editorial:

This bill is about as bad as it gets. When it comes up for a vote, members of Congress who remain committed to more rational energy policy for America and still believe in the dignity of the legislative body in which they serve shouldn't hesitate to reject it.

The Chicago Tribune, from my home State, said the Democrats were virtually locked out of the final negotiations and we were given some 48 hours to digest and evaluate this lengthy bill.

The Patriot News in Harrisburg, PA, says:

The energy issue is an upside-down world for sure when they look at this bill.

They say there is no more blatant example than the 100-percent tax credit available to business owners who purchase gas guzzling Hummers and more than 30 other models of large SUVs. The tax credit was enacted as part of the President's economic stimulus package and was intended to help farmers and other small business, but the tax break is so attractive it has caused a run on vehicles that average 9 to 15 miles per gallon.

We are going to have energy security and energy independence with a tax policy that encourages the purchase of these gas guzzlers?

They go on to say that hybrid cars which offer 50 to 60 miles a gallon are subject to a \$2,000 tax deduction, and that is in the process of being phased out. The list goes on and on of editorial comments across America.

I hope we can return to this bill and do it in a sensible fashion. I hope we can put conservation and energy efficiency at the forefront as we discuss energy security. Though there are many good things in this bill, the good things are outweighed by the negatives.

This exemption from MTBE liability is the absolute worst. To say to these

families, these individuals, and these communities that we are going to lock the courthouse door to them no matter what damage they have sustained is a new low.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am very glad I was present today to hear the speech of the distinguished Senator from Illinois so that immediately after it I might speak a few words.

First, for everybody in this Chamber who wants ethanol—now, I am making the point very clear that I am not talking about whether ethanol is the greatest, whether ethanol is the least, or whether ethanol is the best thing in the world. I am just addressing the millions of people in this country, most of them farmers, many thousands in the State of the occupant of the chair, who would like to see ethanol, since it would do great things for them and at the same time diminish our demands on gasoline from crude oil. Now I am speaking to them.

Whatever has been said by the good Senator from Illinois, all the farmers in his State who produce corn and the other products should know there is no way to get an ethanol bill of any consequence without addressing the issue of MTBE. The way the issue has been addressed by the Senator from Illinois on MTBE is wrong, but nonetheless let us just talk about the reality of it. Do my colleagues want a major ethanol program for America? The answer is overwhelmingly yes. Then go to conference with the House like we did and say to them: We want an ethanol bill like the one that passed the Senate.

They will say: Not on your life, unless you decide to treat those who produce MTBE, a forerunner to ethanol, fairly.

We said: What does that mean?

They said: For those who have used MTBE properly, they shall not be liable for any damages that result from MTBE.

I am reminded in my home State, there was a product liability case against a company that delivers more coffee and hamburgers than any other company in the world, McDonald's. The suit was against McDonald's for delivering coffee to the front window of a car and then spilling the coffee on the lap of the purchaser. The purchaser sued McDonald's because the coffee was too hot.

They did not sue Folgers Coffee for making the coffee. They sued McDonald's for delivering the coffee that was too hot. I think that most people would say that is about right. If the coffee was too hot, then let a jury decide whether they ought to be delivering coffee that is so hot. But what if they would have gone off and sued Folgers Coffee because they made the coffee that somebody used wrongly, to wit, made it too hot and burned the legs of a purchaser of hot coffee? That is exactly what is going on with MTBE.

I am not a proponent of it. I did not know anything about it until I got intimately involved in this legislation and then I found that MTBE is a product that has been authorized and prescribed by the Federal Government. It is something that is supposed to be used because the Government says you can use it and it is all right.

In response to the U.S. House insistence, all we have done is say if someone uses MTBE, as prescribed by the Federal Government, they are not liable in damages. We are very narrow. As a matter of fact, we have unquestionably said if one uses it wrong, if they negligently use it, if they spill it, if they throw it around, if they do not handle it properly and damages result, they can be sued.

I do not think that is exactly what my friend from Illinois said, but I believe that is what this legislation says. I believe that is what we did, and I believe there is no other way to do it.

Then we said in the meantime, it is going to be phased out. That is in the legislation, too, that in a certain number of years it cannot be used anymore. Even if it is used right, it is not going to be used anymore. There is something that takes its place.

Across this land, people file lawsuits in product liability cases and otherwise about many things, and we all know about it. Sometimes we look at a lawsuit and we are abhorred to think they could take such a case to court. Sometimes we think, right on, somebody really messed up and they ought to pay for it. But when the House said to us, if you want an ethanol bill, you have to look at litigation that is ensuing out there in America where MTBE producers are getting sued for a valid, appropriate product, okayed by the Federal Government, used properly, and they are getting sued for damages.

They said: We want to limit that. If it is used improperly and causes damages, the suits can go on. Then we argued and said let's get rid of it in due course, and we have language that says what date it will expire in terms of being a product that can be used.

I want to say again, so that everybody understands, the last speaker has suggested that this bill should be killed by cloture, and that is the right of the Senate on any bill. But I suggest to them if they kill this bill by cloture, which I urge that they not do, they have killed ethanol, and I do not know when it ever comes back.

As a matter of fact, if they think it is coming back without some restraint on MTBE legislation that is going rampant in this country, of the type I have described, suing Folgers Coffee because somebody spilled hot coffee on them, that kind of analogy, for those who think that is going to continue on, then they have given up and abandoned forever ethanol. If that is what they would like, then follow the directions and the wishes of the Senator from Illinois who has plenty of farmers who are waiting and wondering what is going to

happen to this bill because of what they think is going to be fair treatment, creating a new market over the next decade and the next decade after that for a product that has been on a roller coaster for farmers who have been on a roller coaster.

Having said that, I want to talk to another group of people. Throughout the deliberation on this bill, I have not heard more from any group of Americans and any group of Senators than the group concerned about the issues of wind energy, solar energy, biomass, and related energies. Everybody came to us, day by day, as we put this bill together and said: Senator, you know wind energy is working. You are not going to kill it in this bill, are you? Senator, bioenergy is right on the edge, ready to go. All these different energies are ready to go. In the case of wind energy, it is not only ready to go, it is going. It is beginning to show up because it is working so well.

Let me say to my friend, it is gone; wind energy is finished when you kill this bill. It is gone.

You might say: How can that be? It is moving along right now. In fact, over in Massachusetts they wanted to build some out there and some people didn't want them building them out there in the ocean. I don't know which people around but some. How come? It was being built.

Yes, but existing today is a great big credit, tax credit for solar and for wind. Guess what. It expires very shortly. It is gone, out the window. The people who are building wind in America are up here in the halls, knocking on our doors, and saying: Do you really want to kill wind energy in America?

The answer is: Oh, no, I just don't like the MTBE portion of this bill. But I don't want to kill wind. I want to carve it out and save it.

But you know what, people who want wind, you can't do it that way. Do you think we are going to start over next month writing another bill of this nature because this one was dead on a side issue of the type I have been describing, and we don't have any credit for wind, we don't have any credit for solar? Not on your life. In fact, I don't know when we would get around to it.

We can look back to the day after tomorrow or the day after that and say: There it went. There she blew, like they say out in the ocean. There she blew, right out the window with those who decided they wanted to talk this bill to death.

Then you look around and there are people saying, another group around here, a lot of eastern Senators walking up and saying: What is going to happen to coal? We have a lot of coal and nobody uses it. Can't you do something about that in the Energy bill?

We say we have. We have given as good a credit for research and production of clean coal technology in America as has ever existed. It is in this bill.

In fact, I had one Senator yesterday from the East, somebody trying to

make this an East versus West bill. I don't know how they did that, either. This Senator said: I was wondering what was in this bill for my State—being an Eastern State, a big coal State. He said: I found out that it has the finest set of credits for companies to try to use this great asset called coal that could ever be put in a bill. All of that within this total cost of \$2.6 billion a year, on average, over 10 years.

That Senator said: I am voting for it. We have to give coal a shot in my State, said that Senator.

We can go on and on and talk about this. But it is much easier to pick a piece of the bill such as MTBE and state the facts wrong and tell everybody they should not vote for this because of MTBE. But I follow by saying the MTBE situation is not what has been said, and before you decide to kill the bill on MTBE, you ought to remember you don't kill this bill in pieces.

So everybody out there will know who has an interest: You don't kill this bill in pieces. You adopt it all or none.

For those who think MTBE is of that importance as I have explained it here today—and we will be glad to meet privately with any experts around who want to look at it—but if anybody thinks MTBE is of such a proportionate disadvantage to America that we ought to kill the future of windmills and solar energy and we ought to decide we are not going to do any of these other technologies that will develop America's energy base, they are all going out the window.

This Senator thinks in the end the Senators who are looking at the pluses and minuses of this bill may sit back in their chair and say, you know, I might have done it differently. No, Senator BINGAMAN said, maybe he could have done better if he had more time. Yes, maybe they should have given the Democrats more time in the committee. But that same Senator may say: Didn't we do that last year? Didn't we give them all the time in the world and what did they do? Nothing. So we produced something this year.

I will take full credit and full blame that I couldn't figure out how to do this with a regular, day-by-day markup of a bill of this magnitude with input from all sides, and I thought we should have input in a different way. We have established input from the minority party in a different way, there is no question. They got e-mails and portions of this bill as it was produced. They had meetings when they offered amendments. Some were adopted. The last 30 percent of the bill was delivered to them at the end, for them to look at, and they got the message for almost all the amendments were on those things that had to do with electricity and the like. They just didn't win any of them, which usually happens in a conference.

Conferences are usually dominated by the majority party. That is history. That is tradition or whatever you want to call it around here. Many of the

early provisions of this bill are provisions that were adopted last year as part of the bill when Senator BINGAMAN was chairman. But we didn't get a bill.

I decided we were going to get a bill. We worked, and worked as hard as people can work, to put one together, and, frankly, you can go through it and find provisions taken all by themselves and say it doesn't have much to do with energy. But I tell you, you can't go through the whole bill and say it doesn't have a lot to do with America's energy future. In fact, I believe we will see the biggest change in agricultural America in modern history with this bill.

Some will say that is not what the bill is for. The bill is for that if, in fact, in doing that we are producing gasoline for automobiles. It is not bad to get the two for one.

Second, this bill is going to produce alternate activities to get natural gas in abundance, and it is also going to produce just about every stitch of natural gas we can produce as a nation without doing damage to our environment, and that will be used by America for American purposes.

I wish we could do more. I wish we could have done more with Alaskan resources. But you know what, everybody knows, you get one thing and you lose something. You move ahead on one and somebody thinks it is the wrong thing and you take two steps backwards.

To get this bill, well over 1,200 pages, on all the subjects we have done, and get it together and get it here this far and get it through the House yesterday by a majority vote of more than 60, a 60-vote plurality or thereabouts, is pretty good.

I am very sorry it is hung up here in the Senate. I will repeat, I have heard quietly—not openly—that some say this is a bill that is for regions of the country. I can't find it. If they would stand up here and say this bill favors the East or the West and show me how, I would be more than glad to go out and look, listen, and try to explain why it isn't. If MTBE, as I have explained, is an East versus the West issue, then I would assume there is no litigation or potential litigation on product liability in nature from the West. I don't think that is the case. If it has to do with resources, we have tried to produce the basic resource that is good for America's future, wherever it lies—whether it is the coal of Pennsylvania or the coal of Wyoming. We have tried to build under it incentives that will make it used more rather than less. We have done that.

In the next few days, we will hear a lot more. Most of it will be about the issues of which I am speaking.

I want to repeat, for those who want ethanol and want it bad and have been waiting 6 or 7 years for it and want a real bill for it, we have exactly what is necessary. That took 4 weeks of debate and frustration galore, but we got what the Senate said we should get. Yes, you can throw it all away because we had

to take MTBE, as I have explained, with it. Those lawyers who like MTBE like to tell it one way. I tell it my way because I think my way is right. The lawyers' way probably would be if you were using Folgers Coffee at MacDonald's and coffee was spilled on someone's lap, you ought to be able to sue Folgers Coffee. But if you put in legislation you can't sue Folgers, then I don't think they can come to the Senate floor and argue the way they are arguing about MTBE because Folgers didn't make it hot and spill it. Neither did MTBE get spilled around where it shouldn't be, or used unpropitiously or contrary to the Federal Government standards.

Everywhere you look, there is a smattering of Senators for whom I have great respect who would like to see a nuclear powerplant built one of these days. You can throw them away if you kill this bill. They won't be built. If you pass the bill, there will be a chance there will be one following every law and every rule in the books. We might get one or two. I think that is pretty good.

I am prepared, as are a number of Senators who worked with me, to return to answer as other Senators bring this issue up.

I thank the group that helped work on this bill. They were a mighty group of seven who worked as Senators on our side of the aisle. I thank each and every one of them. They had to learn an awful lot, make a whole bunch of hard votes, and make some very close decisions. Now we are here. I hope we go beyond it and get the bill passed.

I yield the floor.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Nevada.

Mr. REID. Mr. President, on the minority side, we have a number of Senators who are going to speak. I will ask unanimous consent that they speak. I have three who wish to speak now, and we have a time at which they want to speak. If there are Senators from the majority who want to come in between those, that would also be part of the order. I think that would be fair.

I ask unanimous consent that on our side Senator KENNEDY be recognized for ½ hour, Senator CANTWELL be recognized for ½ hour, and Senator DORGAN be recognized for 30 minutes. As I indicated, if there are Senators from the majority who wish to speak following Senator KENNEDY, Senator CANTWELL, and Senator DORGAN, that would be appropriate. If not, we have other Senators who have indicated a desire to speak. This is not in the order which they will appear.

So that everyone knows, there are a number of speakers who want to talk: Senators AKAKA, REED of Rhode Island, FEINSTEIN, STABENOW, FEINGOLD, LANDRIEU, SARBANES, and CLINTON.

I ask unanimous consent that Senator KENNEDY be recognized for ½ hour, Senator CANTWELL for ½ hour, and Senator DORGAN for 30 minutes. If there are Republicans who wish to

speak in between, those Senators will be part of the order.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Mr. President, reserving the right to object—I will not—I ask how you might work this in your schedule. We have been told for some time that Senator MCCAIN would like to speak.

Mr. REID. Senator MCCAIN can come at any time he wants, either after Senator KENNEDY or Senator CANTWELL or Senator DORGAN. Whenever the distinguished senior Senator from Arizona shows up, we always give him the floor anyway.

Mr. DOMENICI. He may be around at 2:30 or 2:45. That might work it out perfectly.

Mr. REID. That would be perfect.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Mr. President, the other statement I made was just to inform both the minority and the majority that the Members who desire may speak sometime this evening without any specified time or in any necessary order.

The PRESIDING OFFICER. The Senator from Massachusetts.

PRESCRIPTION DRUG BENEFIT

Mr. KENNEDY. Mr. President, the Medicare system is the system which is relied on, trusted, and a beloved health care system which our seniors use just about every day. They know it is always there for many of them. It gives them an enormous sense of security as they are looking down the road towards the future. I was here in the Senate in 1965 when the Medicare bill was passed. It failed in 1964. It passed in 1965. It is generally recognized today across the country that even though the Medicare bill provided for hospitalization and physicians' fees, the one thing that it did not provide for was the prescription drugs.

In 1965, only 3 percent of all of the private health care bills provided for prescription drugs. But now it would be inconceivable that this institution would pass a health care program for our seniors and give our seniors who have paid into the Medicare system the assurance that their health care needs would be attended to because we know that prescription drugs is of such extraordinary importance to all of them.

It will become increasingly clear. We are in the period of the life sciences century. We are seeing these extraordinary breakthroughs in DNA and genes. The Congress has doubled the NIH budget, and the prospects for breakthroughs are just enormous. If we were to see a breakthrough, for example, in Alzheimer's, we would empty three-quarters of the nursing home beds in my State of Massachusetts. The prospects in terms of what these prescription drugs can do and what they are doing today is enormous. Therefore, we have a very important responsibility to get a prescription drug program.

I believe the bill which passed the Senate was a good bill. Seventy-six Members supported it. It was a prescription drug bill.

But the proposal that is coming out of the conference committee failed to meet the basic and fundamental test; that is, to do no harm because the particular proposal that is being recommended by the conferees will do harm to the Medicare system. The House of Representatives adopted important changes in the Medicare system under the guise of a prescription drug program, and they have been accepted in that conference committee. Now, for the first time since 1965, the Medicare system itself is threatened. Many of us are going to do everything we can to make sure that is not the case.

An editorial in the Des Moines Register today gets it exactly right. It says:

Once upon a time, lawmakers wanted to add a prescription-drug benefit to Medicare. In year one, they failed. In year two, they failed. Now, in year three, the quest for a drug benefit has ballooned into a plan to change the entire health-care program for 40 million seniors.

As a few details about the 1,100-page bill crafted in conference committee trickle out, it's clear another failure this year would be best for Americans.

The editorial concludes:

Lawmakers need, once again, to go back to the drawing board.

Effectively, what they are saying is that no bill is better than a bad bill. This is Des Moines Register. They get it right.

The editorial continues:

This time they should try a new approach: Focus on holding drug prices down, keep 40 million seniors in one buying group to leverage lower prices, open up the global market on drugs to Americans, and remind themselves their job is to serve the interests of the people, not industry lobbyists.

There it is, Mr. President, the Des Moines Register gets it. This proposal will do virtually nothing for keeping prices down.

Access to prescription drugs and costs to senior citizens are the two elements with which our seniors are concerned. This bill does virtually nothing regarding costs. It is flawed in its effort to provide prescription drugs by undermining Medicare.

This conference report represents a right-wing agenda to privatize Medicare and force senior citizens into HMOs and private insurance plans. I guess seniors should not get to choose their doctor and hospital, they just do not know enough. That choice should be made for them by the insurance company bureaucrats. The conference report includes no serious program to reduce the double-digit drug price increase. The attitude of the special interests who hijacked this process is clear: Control senior citizens, not drug costs.

The day this program is implemented, it will make millions of seniors worse off than they are today. It is

an attempt to use the elderly and disabled's need for affordable prescription drugs as a Trojan horse to destroy the program they have relied on now for 40 years. It is an enormous giveaway to the insurance industry and an enormous take-away from the senior citizens.

The new study that has just been released today indicates, when this program goes into effect, the HMOs and private insurance industry will increase by more than \$100 billion if this bill passes. That is more for the private insurance companies and for the HMOs. No wonder our Republican friends and the insurance companies are for this bill. No wonder senior citizens are against it.

The more senior citizens learn of these problems, the more they oppose the legislation. In a poll released this morning, only one in five older voters, 18 percent, say this bill should be allowed to pass in its current form. In fact, 59 percent of the AARP members agree with Democrats that this bill does more harm than good.

Regarding the drug plan itself, even before getting to the problems of privatization and the subsidies for HMOs that are in this bill, older voters oppose the drug plan by 65 to 26 percent. In fact, only 27 percent of all seniors say they would bother to enroll in this plan at all.

Seniors are deeply concerned about the way Republicans have hijacked the drug plan to undermine Medicare. They oppose the subsidies for private plans, 65 to 23 percent. In fact, among the AARP members, opposition to the subsidies is even stronger—68 percent to 19 percent. Older voters oppose the cost caps on Medicare services, 60 percent to 26 percent. And they are deeply concerned, 64 to 26 percent, about the failure of this bill to control drug costs to allow drugs to be reimported from Canada.

As elected representatives of the people, we pass this bill at our peril. In fact, by a margin of 3 to 1, older voters are saying they are less likely to support politicians who support this bill.

It is important to understand how we got to this point. We started in the Senate with a bipartisan bill to expand the prescription drug coverage. A bill passed with 76 votes. The Senate solidly rejected the President's plan to privatize Medicare by telling senior citizens they could only get the prescription drugs they needed by joining HMO and other private insurance plans. That was the position of the President in the spring of this year: You are only going to get prescription drugs if you join an HMO or private insurance plan. You will not be able to under the Medicare system. Then the administration shifted.

But the House took a different course. They realized the President's plan would not be accepted by the American people, so they passed a more subtle proposal, one that tries to privatize Medicare by stealth. Their

only problem was it was not stealthy enough. That is why it passed by a slim partisan majority of one vote in the House of Representatives—one Republican vote.

Now the conference has been hijacked by those who want to radically alter Medicare and to privatize it, to voucherize it, to force seniors into HMOs and private insurance plans. The bill the Senate will consider shortly is not a bill to provide a prescription drug benefit. It is a bill to carry out the right-wing agenda. It allows the elderly to swallow unprecedented and destructive changes to the Medicare Program in return for a limited, inadequate, small prescription drug benefit. This conference report is so ill conceived that not only does it put the whole Medicare Program at risk, it makes 9 million seniors, almost a quarter of the Medicare population, worse off than they are today. I will illustrate that in one moment.

On issue after issue, this report abandons the bipartisan Senate bill and capitulates to the partisan House bill. On some issues it is even to the right of what the House passed. One of the most important of these destructive changes is a concept called premium support. It should really be called "insurance company profit support" or "senior citizen coercion support." It replaces the stable, reliable premium senior citizens pay for Medicare today with an unaffordable premium for the future. Here is how it works.

Today, the Medicare premiums are set at 75 percent of the cost of Part B of the Medicare Program, the part that pays for doctors' care. Beneficiaries pay the remaining 25 percent. The premium is the same no matter where you live. It is universal whether you live in Key West or Portland, ME, whether you live in Takoma, WA, or whether you live in San Diego. You pay the same premium. You pay into the system and you pay the same premium. It increases from year to year at the same rate as the Medicare increases. It is stable. It is reliable. It is now \$58.70 a month Part B premium and \$704 for the year.

Premium support would change all that. The senior citizens can choose, if they want to, get their Medicare benefits through HMOs and other private insurance plans. The Government pays these plans approximately the same amount it costs Medicare to provide the services. The senior citizens pay at least the same Part B premium to enroll in the plans they pay for the regular Medicare, but the plans can charge more if they offer additional services or lower copayments. If the plans can provide services more cheaply than Medicare, they give the difference back to the beneficiaries in the form of better services or lower copay without additional charge.

Senior citizens who choose the private plans may get some additional benefits, but the senior citizens who prefer to keep the freedom to choose

their own doctor are not penalized. And 9 out of 10 seniors have chosen Medicare over Medicare HMOs.

What happens, as everyone knows, is the insurance companies cherry-pick and get the healthier and younger seniors. Therefore, it costs them less, although they get the payment that would otherwise be going into Medicare. So we have the healthier ones leave and the sicker ones remain in the Medicare system. That is what has happened today. There is no reason it will not happen in the future. As a result, we will get increases in the cost of premiums under the Medicare system.

This chart reflects what the Medicare actuaries—not what I estimate but what the Medicare actuaries—estimate would be the national average for seniors. It would be \$1,205. And their estimate national average for premium support, the current estimate, would be \$1,501. And 2 years ago they estimated the national average was \$1,771.

The fact is, no one knows what the premiums will be. You are playing roulette with premium support. Here we have a swing of \$300 in estimates, estimates made by the Medicare actuaries. It could be \$1,205, but under this bill for those who fall into the trial category, they will be paying at least \$1,500 or the \$1,771.

Look at this chart. Let me give you a few examples of the disparity. Again, this is from the Medicare actuaries. If you live in Massachusetts, and in Barnstable—that is primarily Cape Cod—the premium for Medicare will be \$1,400. If you live in Hampden, it will be \$900. That is a \$500 difference.

Today, everyone pays in the same amount and they get the same premium on it. Under this legislation, everyone is going to be paying in, and if you live 100 miles apart, you are going to get a \$500 disparity in the payments under the premium support system. This information is from the Medicare actuaries. This is the kind of roulette our seniors do not want.

Here is another example in Florida. In Dade County, the best estimate from the Medicare actuaries is you will pay \$2,050; and in Osceola County, you will pay \$1,000; you will be paying twice as much.

How do you explain that to the seniors? How do you explain that they pay in and their premiums are going to have this amount of swing to them? No one can accurately predict with any certainty, but we are buying this program? It is untested, untried. It is the greatest social experiment with whom? With our senior citizens. Why? Because there is going to be all kinds of money in there for those private insurance companies and those HMOs. That is what it is about—risking the Medicare system.

Here we have the example in Los Angeles, \$1,700; in Yolo, CA, \$775. And in New York City, \$2,000 if you live in the Queens area; \$975 in Erie. This is the Medicare actuaries' data, these premiums and estimates. And that is the element that is written in this bill.

Now you hear our colleagues who defend their proposal say: Well, Senator, this is really just a trial program. It is not going to be anything more than a trial program.

Well, they are going to have five what they call MSAs, metropolitan statistical areas. If you take five metropolitan statistical areas and then you take one small one—here they are—if you take the States of New York, New Jersey, and Pennsylvania, that is 2.6 million people who are affected. For California—Los Angeles, Long Beach, Santa Ana—that is 1.4 million. For Illinois, Indiana, Wisconsin, that is 1.1 million. For Florida it is 833,000; that is Miami, Fort Lauderdale. For Pennsylvania, Delaware, Maryland, New Jersey, that is 866,000. And then take a small one, Nevada—Reno and Sparks—47,000. So 6.8 million of the 40 million; you are almost up to a quarter who are going to be included in their program, who are going to be subject to these kinds of swings.

They call this a demonstration? This is a Mack truck. This is not just a small Volkswagen, it is a Mack truck, and they are calling it a Volkswagen. And seniors ought to understand it. So that is one threat.

Now, listen to the second threat. We say, well, what about the risk?

Mr. President, how much time have I used?

The PRESIDING OFFICER. The Senator has used 18 minutes.

Mr. KENNEDY. Fine. Let me know when I have 3 minutes left.

The PRESIDING OFFICER. I shall.

Mr. KENNEDY. Now, on the second situation, our Republican friends say: Well, we believe in competition. With competition we will get the best health care for the best price and the best cost. Oh, we say, well, how are you going to do that?

Let's see what is in the bill now that you say that is what you want to do. You think you have competition in this proposal? Let me show you and explain to you how this is a rigged proposal.

First of all, in this legislation they give to all of the HMOs and the PPOs a 9 percent increase in the cost of living over what they give in the Medicare—9 percent. Nine percent? Nine percent? Why are they doing that? Because? They think they ought to get it. They want competition.

The second point that is in this bill is that those who are in HMOs today and in the private insurance companies are 16 percent healthier than those in traditional Medicare. That is not my estimate, that is CMS's estimate, the agency which provide the reimbursement. That is their estimate.

You add these two together and you get a 25 percent subsidy for every private plan and every HMO. They call it competition. I thought competition was an even playing field. This is not an even playing field. And who is paying this additional 25 percent? Our seniors are. It is coming out of their payments. It is coming out of the Medicare

trust fund. It is cutting out the benefits they ought to have. That is ridiculous. That 25 percent should be reinvested in the drug program, not used as a subsidy for the private sector.

Now, we say: Well, you have that 25 percent on that. If you looked through, you would say: Well, that is a pretty big chunk of change for it. You think they would be happy with that, wouldn't you? No, no, no, no, Senator KENNEDY, we are not even happy enough with that. We are going to include, on top of the 25 percent subsidy, a \$12 billion slush fund in this bill—\$12 billion. So 25 percent is not enough. We will be able to provide hundreds of millions—hundreds of millions—billions of dollars to those HMOs, some of which made more than \$1 billion last year. Some of those CEOs are getting paid more than \$22 million a year. And we are going to take \$12 billion more on top of the 25 percent and use that as a slush fund.

Talk about an even playing ground. What could that \$12 billion provide for? These are the leading diseases about which our elderly are concerned: Arthritis, osteoporosis, diabetes, cholesterol, acid reflux, thyroid deficiency, and depression. That \$12 billion could provide for 11 million of our senior citizens who suffer from arthritis a year, or 12 million who suffer from osteoporosis, or 11 million who suffer from depression, or it could be used for those who suffer from high cholesterol, right on down the line. That is what it could mean for our senior citizens. But, oh, no, this conference said no, we are going to take that and add that in. Not only are we going to threaten you with this premium support program, you will never really know what your premiums are, except that they are going up.

I want to take just a few more minutes about this proposition. I had mentioned earlier that the day this bill passes, you are going to have 9 million of our 40 million Americans who are going to be worse off and pay more. Do we understand that?

On top of what I have already explained—the completely unfair playing ground that is so tilted towards those who do not support Medicare—now we are saying to our elderly that between 2 million and 3 million—and closer to 3 million.

Low-income seniors pay more. Six million of them will be receiving Medicare but also receive Medicaid. The conference proposal denies States the ability to provide wraparound coverage to those low-income seniors. Instead, a uniform Federal co-payment is imposed, and it is indexed, so that it goes up every year. Their out-of-pocket payments for drugs will be raised, and they may not even have coverage for the drugs they need the most. If they need a drug that is not on the insurance company formulary, they will have to go through a burdensome appeals process. Most will simply go without.

Every one of these 6 million will be paying more. Maybe it is \$2 a prescrip-

tion, but if you have three prescriptions, that is \$6. You may have to get a refill every other week, and it begins to go up, \$24, \$25. Nine million lose the day this passes. Let's keep our eye on these 6 million low-income seniors.

Prescription copays hurt the very poor. You will have almost double the amount of serious adverse events when seniors don't take those medicines. Emergency visits go up as well, double the amount. For those 6 million, these are the statistics from all the health care studies. Not only will they be paying more, but their health condition will be threatened. It makes absolutely no sense from a health policy point of view.

One of the most important aspects of the legislation passed in the Senate was to say we were going to make sure that the asset test, which has been around for many years, the asset test for the very poor would no longer be in effect. As a result, we took steps with regard to prescription drugs that we haven't even done with regard to Medicaid. The Senate bill really reached down for the poorest of the poor elderly.

We said: OK, maybe you can have the car, \$4,200; you can have the personal savings, \$2,300; you can have even a \$1,500 insurance policy and a burial plot for \$1,500, and we were not going to hold that against you. People who had worked all their lives perhaps had those.

What do our good Republican friends do? They reimpose the assets test and say, if you have that, you are not eligible. Three million of the poorest of the poor are dropped out of coverage under this proposal. That is enormously unworthy of the proposal.

I want to mention an aspect of this because I am running out of time. I have mentioned that we have the premium support which is going to threaten the Medicare system. We have the subsidy programs which are going to threaten the whole Medicare system by enticing, coercing, bribing seniors out of that, and then letting the Medicare system collapse right in front of them.

Then they have added another program which they call health savings accounts—what used to be called medical savings accounts—which provides billions of new tax breaks for the healthy and the wealthy. The money that should have been used in this bill to provide additional prescription drugs, they have taken billions out to provide for this new program. They encourage the healthy and the wealthy to take high-deductible policies, policies that require you to pay thousands of dollars before you get benefits. That is fine for people who can afford to put money into tax-free savings accounts but it is not good for ordinary working Americans.

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. KENNEDY. The Urban Institute and the American Academy of Actuaries have estimated that the health-

iest people are pulled out of the risk pool for regular comprehensive policies by these accounts. Premiums skyrocket, if this policy becomes law. If you want to keep your insurance policies, you can see your premiums increase as much as 60 percent.

The Urban Institute estimates that premiums, and this will be for all those who are employees working in small companies all across the country, once this program gets started, could increase by over 60 percent and the American Academy of Actuaries have estimated that premiums would jump \$1,600.

Why are we doing this? Why are we taking a chance with the Medicare system? The American people and our seniors have confidence in Medicare. Why not just do what we did in the Senate in a bipartisan way and have a good downpayment rather than threaten the Medicare system?

This was the wrong way to go. This bill does not deserve the support of the Senate. I hope it will be defeated.

The PRESIDING OFFICER. The assistant minority leader.

Mr. REID. Mr. President, the distinguished senior Senator from Arizona has called and wishes to speak following Senator CANTWELL. I ask unanimous consent that that be a part of the order, following her statement, the Senator from Arizona, Mr. MCCAIN, be recognized for whatever time he may consume.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington.

Ms. CANTWELL. Mr. President, how much time do I have allocated to me?

The PRESIDING OFFICER. One hour.

Ms. CANTWELL. If the Chair will notify me after 40 minutes.

The PRESIDING OFFICER. Yes.

Ms. CANTWELL. We are now going to go back to the Energy bill. I know many of my colleagues have already been on the floor today discussing the conference report that is before us. While I think my colleagues have done a good job of outlining some of the most egregious parts of this legislation, because it certainly is shocking legislation, the point I would like to make in the next few minutes is about how we got to this process and how America is very disappointed in what we have come up with as far as a conference report.

It should be no surprise to people here when they find out that this bill has basically been drafted in secret without a bipartisan effort, without a lot of daylight shown on the details of the legislation until just this weekend. Now many people are curiously reading through various aspects of the legislation trying to understand all the giveaways, all the subsidies, and whether it could possibly mesh into any kind of comprehensive energy policy. I think the bill is a disaster as it relates to moving us off our foreign dependence and coming up with a concrete energy

policy. It should be no surprise, when this energy policy legislation started with a task force meeting with the Vice President in which no input was given, no open session as to what was being discussed.

That a bill is brought here to the House and Senate that ultimately included a conference report drafted in secret makes it very difficult for us to have good legislation. But don't take my word for that because I do want to discuss the policy ramifications. Let's talk about what America is saying.

In the last 24 hours, we have had a variety of people around the country, particularly in the press, look at this legislation and actually make editorial comment on it. When I woke up this morning and saw the stack of editorials that are before us on each Member's desk, I was shocked to read the detail and comments from newspapers all over the country. That is good news because it means America is watching this energy policy, that those of us in the Northwest who have suffered from Enron market manipulation are not the only ones watching, that those in New York who have suffered through blackouts are not the only ones watching, that people all across America are.

In fact, the question is, Are we better off having to pass this Energy bill or are we better off without it?

I will take from what the Great Falls Tribune said:

Once again, let this energy bill die.

Why would somebody say that? Some of my colleagues are trying to say this Energy bill actually has a concrete policy. According to the Great Falls Tribune: We are as certain today as we have been for a couple years that no Energy bill is a better option than the bills being hashed around in the marble halls of Washington, DC.

Other newspapers have said this bill should be a "do not pass go."

The Minneapolis Star Tribune, again an independent newspaper organization, that probably, if it took a close look at this bill, saw there were some projects that the State of Minnesota could benefit from. Yet they say the Energy bill is a fine target for filibuster. A newspaper organization in a State that actually has energy projects in this bill thinks we should filibuster this bill:

The energy bill unveiled over the weekend is wrong headed policy prepared in a high handed way, fitted with perhaps enough gifts to selected opponents to buy its passage. It's an abusive approach to lawmaking, egregious enough to deserve—indeed, to invite—a filibuster.

That is from a State that has energy projects in it. So this is a national energy policy, which some, such as colleagues on the other side, like to talk about. According to the Houston Chronicle, in a State that would benefit in the millions of dollars from different subsidies and sweetheart deals in this legislation, they say:

Fix the Flaws.

A bill setting out a national energy policy should encourage conservation, investment

and new technology; increase available energy; make the distribution system more reliable; and reduce pollution from burning fuel. The energy bill unshrouded Monday by congressional Republicans is, at best, half of a loaf that has been dropped repeatedly in the dirt.

Some people say this was a process, it went through committee hearings and through all sorts of hearings, and we had discussions on the floor. I remind my colleagues that we got to this point on July 31 of this year where we could not agree on an energy bill. I personally thought we should hold the bill up at that time and send it back and basically make the point that it wasn't going to be a successful product, hoping my colleagues would go back to the drawing board and get more bipartisan legislation.

What happened was, we got so desperate, we passed last year's Senate bill and many of us said: We know what will happen. They are going to take last year's Senate bill and dump it and overreach in the conference because it will be controlled by the Republicans, not in a bipartisan policymaking fashion, but they are going to overreach. A lot of people say this has been written by the energy lobbyists.

The Philadelphia Inquirer said:

The Energy Bill: Lobbyists Gone Wild.

They say:

After all, there's something for everyone here. Everyone, that is, with enough dough to finance a lobbyist's next pair of Gucci [shoes].

It is amazing that so many newspapers have so much on the ball and took time in their editorial pages in the last couple of days to shine the bright light on this policy that has been drafted in the dark and not in a bipartisan fashion.

The Chicago Tribune said:

Energy Legislation on the Fly.

If those problems don't sink the bill, the process by which the Republican majority cobbled it together certainly ought to. Democrats literally were locked out of the final negotiations, and now Congress—and the public—have about 48 hours to digest and evaluate the contents of this mammoth document. This is no way to craft sensible national energy policy.

That was the Chicago Tribune.

My colleague, Senator DURBIN from Illinois, has been out here talking about the MTBE provisions and how those who might be affected by that and the public might become deep pockets on what really is the responsibility of individual businesses. But I think he should be very proud that his hometown newspaper is trying to educate people all over Illinois who might think, gee, what is wrong with this bill? Probably ethanol provisions are in it, and it ought to be a good bill. They are actually doing the work to show that this is quite controversial.

Another newspaper, the Milwaukee Journal Sentinel, wrote something pretty humorous:

Indigestion Before the Holidays.

The Old Testament is only slightly longer and is a lot more readable. . . .

We should take our time with this bill.

The St. Paul Pioneer Press is obviously pointing to what Members would refer to as pork-lined elements:

Energy Bill Lavishes Billions to Drill . . .

I don't think that is what we thought the future energy policy of America would be—lavishing billions to drill. We thought we were going to have an energy policy that was about innovation, technology, about moving forward on conservation, and about alternative fuels. Not that we didn't think we were going to continue to use some fossil fuels, but we didn't think we would lavish billions on them.

We also heard from USA Today. At a time when we have ballooning deficits, what is this bill doing to help us get on the right track? They said:

Costly Local Giveaways Overload Energy Plan.

The Nation can't afford an energy program that drives up the Federal deficit without addressing critical problems.

Part of this is not addressing critical problems. There are many aspects of this earlier legislation draft that I think could have gone a long way toward getting us on track with jobs, along with the Alaskan natural gas pipeline, that probably are not going to come about now, which could have gotten us further ahead on a hydrogen fuel economy and would have established U.S. leadership in that new technology. Yet that was left out of the bill.

The Wall Street Journal, which I think has followed the energy debate very closely, was shocked to find out in the last couple of days:

The fact that it's being midwifed by Republicans, who claim to be free marketers, arguably makes it worse. By claiming credit for passing this "comprehensive" energy reform, Republicans are now taking political ownership of whatever blackouts and energy shortages ensue. Good luck.

Why is that? That is the Wall Street Journal, and it is basically putting these issues that have happened in America already—energy blackouts and shortages—on the other side of the aisle, on their lap, and saying this policy isn't going to work.

I have to say, as a former businessperson, we have had a lot of debate about standard market design and regional transmission organizations. I want to see free markets work. But free markets work when there is transparency and when there are rules in place. This legislation does very little to provide for transparency in the market. I think that, along with many of the other items of oversubsidization and special interest initiatives in this legislation, is what drew the Wall Street Journal to say it is not a good piece of legislation.

What else do people say?

The Concord Monitor basically said this is:

Abuse of Power: The Federal Energy Bill is Ultimately Worse Than No Bill At All.

That is what America is starting to understand—that this policy is worse

than no bill at all. It is a disappointment that we are at this stage of the ball game, and I have to say as a member of the Energy Committee for the last almost 3 years, before joining the committee, I talked to colleagues and former members about joining that committee. People pointed out to me that it had been almost 10 years since the last time we had an energy bill pass out of that committee. Who knew whether we would have an energy policy in the future? I think it is safe to say, with this product in front of us, we bit off more than we could chew by cobbling together a bill that is not really centered around the future energy policy but is specific giveaways to individuals so that they will buy in on support of this legislation. But it is worse than I could have imagined, and certainly doing nothing is better than this legislation.

What about the blackouts? I know some of my colleagues would like to say this is legislation that is going to move us forward in this area. I can tell you what the Providence Journal said:

Energy Gridlock.

Unfortunately, Congress seems intent on passing a bill that does nothing to make our energy supply cleaner, safer, or more affordable, and certainly does nothing to prevent a major failure. We hope that it won't take another huge blackout for Congress to see the light.

That was written in the last week or so.

I have a lot to complain about here because my predecessor—we had a blackout in the Northwest prior to New York's, and my predecessor, former Senator Slade Gorton, actually proposed reliability standards and a process for moving forward so that the industry was accountable for energy supply and standards that would prevent us from having blackouts.

What happened? His legislation actually passed out of the Senate and got held hostage in the House because the industry wanted more deregulation before they were going to put reliability standards in place. How is that responsible?

Now we are moving forward on an energy bill that basically, at best, as it relates to FERC and its jurisdiction and responsibility, is confusing and muddling. We do nothing about the market manipulation issue of Enron in this legislation.

While I would like to believe the reliability standards will help in some ways, I don't know, given the overall aspects of the bill, that they are going to be as helpful as we need them to be. Why should we have to be told that you have to swallow the whole energy policy that is bad for America just to get reliability standards so people in New York or Ohio or Michigan can be sure their lights will turn on at night? That is a ridiculous policy. This body should have passed reliability standards as a stand-alone bill when Slade Gorton proposed it, and it should have passed it as soon as we came back after the August recess.

I am amazed again at how many newspapers across the country are writing about this bill. We talk about, obviously, some of the Clean Air Act and Clean Water Act issues, and I will get to those in a minute.

The Fresno Bee calls this legislation "political wheezing."

They say:

The valley representatives in Congress have put a particular stake in this fight. The problems of air pollution, especially diesel particulate matter, are worse here than anywhere else, and we must do everything we can to address this.

What about the Ventura County Star newspaper talking about the obviously bad coastal oil and gas language? Every year on the west coast there is a battle that goes on. Basically, we have had for 20-some years now a moratorium on drilling off the coast of Washington, Oregon, and California. While that is an Executive order moratorium, we always have to worry that some interest or some group is going to try to lift that moratorium. It happens every year, and every year in an appropriations bill Congress continues to say: We want a moratorium on drilling off our coast of Washington, Oregon, and California.

Why do we have to drill there? We have marine sanctuaries. We have terrific problems with tanker traffic and a variety of other issues. We have had spills off the coast of Washington that have caused incredible damage. Why do we have to worry now about legislation that makes that issue more cloudy by saying you could give the Secretary the power to expedite and approve a process on this? What did the Ventura County Star say?

They said:

Instead of trying to continually slip in language that harms the Nation's coast lines, puts thousands of communities at risk of an economic and environmental disaster, Congress should be focused on the public's welfare, the environment, and the rights of States to protect their residents.

This bill undermines those rights. It undermines States rights, it undermines the rights of individuals, and it will leave our shorelines less protected.

What did the Nashville Tennessean say? It said:

An energy bill without savings has no steam. The President and his allies have built an energy policy on their convenience—

On their convenience.

When they are willing to build on conservation, then they'll have an energy policy that will work for all Americans.

Makes sense, doesn't it? The bottom line is, this bill is what some people are saying. It is about Hooters and polluters. It is about special interests. It is not about a conservation policy that is good for America, and it does very little to get us off our dependence on foreign oil. America deserves better.

If our generation has been smart enough to put a man on the Moon, our generation can be smart enough to get off our dependence on foreign oil, but we in this body have to do our job. We

have to draft an energy policy that has a vision, that has a focus, that has the right incentives and ask America to step up and help with this process.

I wish to continue with a few other charts. The Orlando Sentinel agrees with what I have just articulated and that is a concern about this Energy bill and where the focus is for tax breaks.

The Orlando Sentinel said:

Start over: The energy bill before Congress is worse than what exists.

Why do they say that? They articulate:

Two-thirds of the tax breaks will go to the oil and natural gas and coal industries, helping to perpetuate this country's dependence on fossil fuels.

A lot of people hear about these tax breaks and think we are talking about new technology, either smart metering, wind energy, or something—even clean coal. But the clean coal percentages of the dollars spent on tax incentives in this bill are very minor as well. So we are spending money on subsidies, but we are spending them in the wrong direction.

What does America say when you ask them about this? What do they say when you say: Gee, here's the choice. The question to them is, Do you support giving subsidies to oil and natural gas companies and giving tax incentives. Basically, when you read a description of this, the majority of voters in this country, 55 percent of them, think Congress would be better off if we didn't pass this legislation. A majority of Americans are already saying they are not interested in this legislation.

This bill is about as bad as it gets. Obviously, I am encouraging my colleagues to vote no. As the Atlanta Journal-Constitution said:

Put backroom energy bill out of country's misery.

It goes on to urge, when Members of Congress have the chance, "Members of Congress who remain committed to a more rational energy policy . . . shouldn't hesitate to reject it."

I have just read for my colleagues, not my thoughts, but the thoughts of newspapers around the country. Why did I do that? I am sure my colleagues can read. I know they have busy schedules today. I know they have these editorials on their desks. I spent time to do that because I want them to know that America is watching, and America expects us to stand up and do the right thing. This bill that we have had very little time to really understand, and basically on this side of the aisle have been shut out of the process as it relates to the conference report, are trying to respond in very short order to say that this bill is a mistake. I want my colleagues to know that the rest of America is watching.

Some of these issues my colleagues have gone over before, but I want to articulate a few of my objections to this legislation because I think it is important for America to understand the various aspects of this legislation.

First, there are a variety of environmental laws that are basically undermined by this legislation: the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the Outer Continental Shelf public lands issues. I ask myself: Why is it that we have to undermine current environmental law to have a national energy policy? I have sat on the Energy Committee in various hearings about public lands, about energy companies, about getting more supply. I have not heard an industry show up and testify that they have to do something about the Clean Water Act, but this legislation does undermine the Clean Water Act. It exempts all construction activities at oil and gas drilling sites from the coverage of runoff requirements under the Clean Water Act.

Is that what America wants? Is America so desperate for new oil and gas drilling sites that they say the runoff at those sites are something from which those particular industries should get an exemption? Everybody else who is a developer in America has to deal with runoff. It is not an easy problem.

We set a priority. We said we wanted clean water in America and so we set standards. So why would we let new oil and gas construction out of that?

We, obviously, care about clean air. Why do we have to have an energy policy that basically changes clean air attainment levels that we have already set in policy just to get new energy construction? Is that what the Congress thinks the message ought to be? Obviously, this legislation is a rewrite of existing law and it postpones ozone attainment standards across the country. This is a matter that was never considered in the House and Senate bill and that has now been inserted into the conference report. That is what one gets out of a secret process. They get bad legislation as it relates to some of our strongest environmental laws.

Now, why does a national energy policy have to step on safe drinking water? Are we in such desperate straits to get energy supply that we are willing to say there can be an exemption from safe drinking water? The provisions in this act basically remove an oil and gas extraction technique from regulation of the Safe Drinking Water Act.

Hydraulic fracturing is a process by which water, sand, and toxic chemicals are injected into rock so the oil and natural gas that they contain can be extracted. So if we do that in some large body of water within my State of Washington, somehow that company that is involved in that technique does not have to meet the regulations under the Safe Drinking Water Act?

Somebody who is going to explore for that kind of oil and gas, is it so important for us to have that that somehow we are going to say they do not have to meet safe drinking water standards? I do not understand that.

I already articulated a little bit our concerns about public lands. Since

when does an energy policy for America, that ought to be focused on a hydrogen fuel economy, about energy efficiency, about fuel efficiency, a whole variety of things, have to have an assault on public lands?

When drilling on those public lands, one has to pay a royalty. Oh, but under this bill now less is paid because we are forgiving some of those royalties. Why? Because we want to incentivize more oil and gas drilling on public land.

Why? If we look at the research that shows where the availability of oil and gas is, it basically shows on most public lands it is uneconomical; it is hard to reach. One cannot get that far on the access to public lands to make it even efficient. So why now further incentivize it by saying we are going to make them pay less in royalties?

The other thing is it creates this new entity—I do not know what one would want to call it. I do not know if it is the Cheney committee. I do not know what it is, but somewhere in the White House this legislation says now there will be an organization that plays a policy role on expediting oil and gas drilling and making sure that if it is about waiving access to public lands, this group will help get the job done. I do not understand why we have to go through that process of dealing with our public lands to make energy policy work in America.

I think there are many other things we should be doing. Let's talk about a few other things, because I know that I have colleagues who want to chime in on this, but I have to mention a few other things that I was shocked to find in this legislation.

As a Member who spent many hours on the electricity title, I do not understand why this bill has to have an exemption for Texas. Why does the State of Texas get out of compliance with the electricity title as it relates to electricity market rules, market transparency rules that are so important to making markets work, basically protecting the consumer? Texas gets protected from the cost shifting that happens in transmission construction, but the rest of us in the country do not get to be protected.

Now, I wanted to bring this issue up when we were debating this bill in July but we decided, because there was so much turmoil, to take this out and to basically go back to the Senate Democratic bill passed from the previous year just to try to get something going. As I said earlier, now we know what the end result was: A bill in secret in conference that has all sorts of things in it, including this exemption for Texas.

In the electricity title, after what we have seen in California with deregulation, as we have seen with various market manipulation activities, we want better rules. We want transparency. We want things to work and to have individual utilities held accountable, but we are going to exempt Texas. Some of the people have said, well, Texas is not

tied to the rest of the country so for some reason Texas should be exempt from this.

Here is the facility right here. This facility does interstate and intrastate commerce and is connected, and if this electricity title is good enough for Washington, good enough for New York, and good enough for Ohio, it ought to be good enough for Texas, too. They should not have an exemption in this bill.

What about the sweetheart deals in this legislation? I could go on actually forever about the sweetheart deals in this legislation. My favorites are the \$1.1 billion for a new nuclear facility in Idaho. Not that this Senator has an out and out opposition to nuclear facilities. We have some in Washington State. I spend a good deal of my time talking about Hanford cleanup and the billions of dollars taxpayers have spent on trying to clean up nuclear waste. But why are we going to spend \$1.1 billion for a new nuclear facility in Idaho to see if nuclear power can produce hydrogen? There are thousands of ways to produce hydrogen. You do not have to have a new nuclear facility to do it.

My other favorite little part of the sweetheart deal is basically a process in the bill in which DOE can help pay for and finance the transmission hook-ups that might end up being used for a coal company in Texas.

My colleagues might say, well, geez, if someone has new power and they want to put it on the transmission grid in my State they get in line. If they have capacity and they want to be added to the grid, they come to the Bonneville Power Administration and work with them about how they are going to add capacity to the grid, but they do not have DOE coming in and basically saying they will help them get connected and get capacity to the grid.

That is just part of the aspects of this legislation, the many sweetheart deals. I am sure many of my colleagues are going to go through this and talk in more detail about some of this legislation, but this energy policy, more than anything else, is a missed opportunity. Instead of incentivizing the right programs, we are spending \$23.5 billion in tax incentives where only a small percentage of them go to the renewables, conservation, and energy efficiency that America thought it was investing in when it heard about this energy policy.

The whole provision that we talked about dealing with hydrogen fuel, which was an investment in goals and basically a process for us to get to a hydrogen economy, have been thrown out of the legislation. The only thing that remains is sort of a small incentive for that.

What about creating the clean energy economy of the future in which we thought we could estimate a creation of 750,000 jobs in America over the next 10 years by focusing on these energy efficiencies? Well, if they are spending

\$23.5 billion and only have 32 percent going to that, those 750,000 jobs are never going to be created in America.

I know my colleague from New York wants to speak, and I know I have other colleagues who want to speak, so I will try to wrap up, but I feel disappointed for the policy opportunity that is being missed. America wants to know what this legislation is about. They want to know where we are going with energy policy. This policy could be far more reaching in response, not just to the crises that we have had in Washington, California, and Oregon, and not just to the policies of blackouts or the fact that these institutions, the House and the Senate, have not passed a reliability standard that would give people in New York and other places in the country the kind of security they need. We are missing a big opportunity to be leaders in energy policy in the world. You might hear some people say we are going to get this national grid. It is not about a national grid. I guarantee we are not going to build a national grid and ship power from Seattle to Miami Beach, and anybody who tells you that they are going to does not understand energy policy. A national grid is not about shipping power all the way across the country. We are entering an era of distributed power. That means you produce power closer to the source and to the individuals who want to have it.

What do you do now that you have hydrogen fuel cells? You have new forms of energy that can connect to the grid. What do you do to make that a reality? First of all, you obviously provide the right transparency and stabilization of the system and give oversight to an entity that hopefully does its job. Obviously FERC, in a lot of instances, has failed to do its job. But you create these decentralized energy plans in which individuals can connect their power source and their generation to the grid and have it delivered in that region. That is the most economical delivery of energy. That is the future.

This bill does not invest in that. It does not invest in net metering, which would basically have a framework for people to understand how to get their power source onto the grid. It doesn't invest in an interconnecting standard by which everybody could start understanding how they could connect to the grid. It doesn't even set standards for some of these new technologies that everybody wants to be part of developing. There should not only be a national standard for the United States on how to build a hydrogen economy, it ought to be an international standard so the United States can be a leader in job creation in that new economy. But that is not in this bill.

As bad as this legislation is, and it is bad, my colleagues should make no mistake; this bill should not pass. But the tragedy is that America is not grabbing its future opportunity to both

get off of its dependence on foreign oil and also to invest in an energy economy that will produce jobs and have America lead the way in new energy technology. Let's not embarrass America by passing this bad legislation that undermines environmental laws, that puts the tax incentives in the wrong way, runs the deficit up without giving us a return on jobs, that basically does little to address the market manipulation and blackout situations that happened in the past and, as I am sure my colleague from New York will talk about, really sticks some Americans with the deep pocket expenses of cleaning up waste.

Let's not pass this legislation. Let's listen to America. Let's listen to what those newspapers are saying because they are the first shot at this legislation and they understand. Let's go back to work, even if it means next year. Let's go back to work and let's put an Energy bill together that America can be proud of. Let's make it a goal of our generation that we are going to get off our foreign dependence, but we are going to do it the right way—the Members of this body will work together to get that legislation done.

I yield the floor to my colleague.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from New York.

Mr. SCHUMER. I only need 5 minutes of time, and I can yield back the rest of my time to my colleague from Washington to finish. I know she had an hour.

How much time remains?

The PRESIDING OFFICER. There remains 21 minutes.

Mr. SCHUMER. I ask unanimous consent I be given 5 minutes, and the remainder of that 21 minutes goes back to my colleague from Washington State.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I thank my colleague from Washington for her stellar leadership on this issue. She has been just a beacon on this bill, on which it is appropriate to have a beacon. She is the beacon from Washington State, and I thank her for the good work she has done.

I thank my colleague from New Mexico. We are good friends. I regret I feel so strongly about this legislation in opposition to him. But I believe this is the worst legislation that I have seen in my over 20 years in the Congress. It is bad for what is in it, and it is bad for what is not in it. I will speak at much greater length on those issues when I have more time, but I would just like to mention a few things.

It is laden with special interest provisions. There is no question about it. So many people got little things for their States. Some of them are good, some of them are not good. When you add them up they are extremely expensive. It is hard to believe in an administration that is watching costs so much that a bill that was originally \$8

billion should balloon to \$23 billion. This includes \$1 billion to build a nuclear reactor in Idaho. I understand we need projects in people's States to sort of grease the wheels of legislation, but at \$1 billion a shot?

There is so much bad in this bill. To me, the two worst provisions are the MTBE and the ethanol provision: MTBE, taking people's livelihood they put into their home; their homes are ruined. Their only hope is for the oil companies, which knew how bad MTBEs were and didn't tell anybody, to help pay. We pulled the rug out from under tens of thousands of present homeowners, and millions of future homeowners who cannot even live in their homes anymore. They can't take a shower. They can't drink the water. And we are saying: Tough luck. We are giving the MTBE industry \$2 billion to close. We don't give a small store owner any money when they close. In addition, we say you are absolved from your mistakes and the taxpayers, the homeowners, pick up the bill.

The ethanol provision, I have such disagreement with so many on my side of the aisle I am not going to get into it. Suffice it to say, if you want to subsidize corn, good. Don't make the drivers of New York State or Washington State or some of the other States on the coasts pay for it. I believe this can raise our gasoline prices 4 cents to 10 cents a gallon in my State, and in many others. That is not how we do things around here. It is not how we should do things around here.

How can we be asked to support a bill that does that?

But the worst thing about this bill is what my colleague from Washington mentioned, which is the missed opportunities. If there was ever a time, if there was ever a perfect storm to create a real energy policy in this country, one that we don't have, it is now. We have 9/11, and everyone realizes how we have to become independent of Middle Eastern oil. We had Enron, and everyone realizes the problems in trafficking in electricity and in the grid and that things have to be changed. We had the blackouts this summer, and everyone realizes the grid that we have can't be piecemeal anymore.

These are perfect opportunities to get our hands around the policy that will serve us well for the future. Nothing is in there. It is not simply that there are special interests and a policy, but there are special interest provisions and they take the place of any real energy policy. That is what so bothers me about this bill.

China is adopting more stringent CAFE standards than we are. Should that make us wonder what we are doing?

I read history. Great empires, great countries—and I love this country. It has been the most wonderful thing for my family that has ever happened—begin to lose it when they fail to come to grips with reality. We have a reality here. We have three realities. We are

just fiddling while Rome burns. We are dancing on our merry way and giving out a little bit of pork here and a little bit there and a little bit here and not dealing with the fundamental energy problems we face.

I will have more to say later. I thank the Chair. I thank my colleague from Washington for her courtesy. I yield the remainder back to her.

Ms. CANTWELL. Mr. President, does the Senator from Illinois wish to speak? I yield to the Senator from Illinois 5 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Washington.

Mr. DOMENICI. Mr. President, I have been waiting to speak. I didn't understand what happened.

Mr. DURBIN. I believe the Senator from Washington has time remaining and yielded 5 minutes to me.

Mr. DOMENICI. After that, are we finished?

Ms. CANTWELL. I will probably have about 10 minutes left and we will wrap up.

Mr. DURBIN. Mr. President, I thank the Senator from Washington for yielding.

Consider this: You buy a home in a neighborhood and you start hearing about people around your neighborhood who are getting sick. It turns out it is not just a common, ordinary sickness. It is serious; it is cancer. Then you are puzzled and start wondering: Is there something in the water. Isn't that the first thing you ask? Then you find out there is something in the water. It turns out it is something called MTBE. You never heard of it before. They explain to you, it is in the gasoline in your car. Incidentally, at that service station on the corner—the one where they dug up the tank—that tank was leaking. The leaking gasoline from that tank contained MTBE, and it got down so low that it got into the water supply of the village in which you live. The water you have been drinking and giving to your kids contains MTBE.

Studies have shown that MTBE can be cancer causing. Think about that. Totally innocent and unsuspecting, you have now learned that a public health hazard that threatens your family, the value of your home, and your community is linked to something you had never seen before and never heard about.

So what do you do? You are concerned about the health of your family. But you turn around and say: Whoever is responsible for that additive that threatens my family and my home and my community needs to be held accountable.

That is what America is all about. Nobody gets off the hook. So people go to court. They say to the oil company: Did you know that MTBE in your gasoline could threaten public health? Well, it turns out they did. They knew for a long time.

They also knew that if that MTBE got in the environment, that didn't dis-

appear, it stuck around forever. A tiny amount of it could be dangerous to thousands, if not millions, of people. They knew it. They continued to make it. They continued to sell it. They knew all along that people would get sick and some would die as a result of that product.

Should they be held accountable or should they be let off the hook?

Turn to our Energy bill and look at section 1502 which answered that question for America. The makers of MTBE are given safe harbor. It sounds great, doesn't it. Here is what it means. You cannot sue to hold that oil company or maker of MTBE accountable for that deadly additive that is poisoning people and causing cancer if it is a product liability lawsuit—can't do it. But we have decided that in order to strike a political bargain here, we are going to let the oil companies off the hook.

What does the family do? What are they supposed to do about water they can't drink, where people are sick in their neighborhood and where houses are losing value in a community that is scared to death? We tell them to read the Energy bill we are producing here. That is the best we can do for you. We can't answer your problems. We can tell you that we passed a good bill and the oil companies love it.

The Senator from New Mexico came to the floor earlier and very candidly—I salute him for this—said you had better understand the deal. If you want to help ethanol, you had better let the MTBE polluters off the hook. Otherwise, there is no deal.

We have spent 20 years producing ethanol. My State produces more than any State in the Union. I have proudly stood behind this product because I believe it is good, it is healthy for the environment, and it reduces our dependence on foreign oil. But I have said to my friends back home who support ethanol and I will say it on the floor: If the bargain I have to strike for ethanol is to turn my back on families who are dying from disease because of MTBE, the deal is off. The deal is off. That is unjust. It is immoral. It is wrong. If that is what it takes to promote ethanol in America, I will not be part of it; absolutely not. Count me out.

That is a basic injustice, to say those oil companies would not be held accountable for their wrongdoing in order to promote the ethanol industry. It is a deal with the Devil. It is a Faustian bargain, and I don't want to be a part of it, and no Member of the Senate should either.

If this is as good as it gets on the floor of the Senate, shame on all of us. This bill should be stopped in its tracks. We ought to send the people back to the committee and say start over and get the work done. America's energy future depends on thoughtful, visionary policies. It doesn't include this kind of a deal with oil companies to let them off the hook.

How in the world can you turn your back on these families who, through no

fault of their own, are facing these terrible health problems? These families can't go to court now to hold the oil companies that knew better accountable. That is what this bill does.

The Senator from New Mexico has been very candid. I admire his candor. But his candor tells the story. We can do a lot better.

I thank the Senator from Washington for her leadership on electricity and protecting our public lands, and other areas.

I yield the floor.

Ms. CANTWELL. Mr. President, I will not take all 10 minutes. I know we have other colleagues in the Chamber. I wish to make one final point.

I thank the Senator from Illinois for continuing his talk about this issue as it impacts his State and national policy which we are all trying to fight. But many of my colleagues know that on one provision in the Energy bill relating to Enron, we really tried to make a point. In fact, 57 Members of this body passed an amendment, albeit on the Agriculture appropriations bill because we couldn't get it on the Energy bill when we recessed in August, which basically said we think market manipulation has taken place and something needs to be done about it.

In fact, at that time I argued that in this legislation we ought to have a prohibition on the types of market manipulation that actually happened with Enron and include that in the Energy bill. My colleagues on the other side of the aisle drafted language that basically prohibited one of the Enron abuses but not all of the Enron abuses. But in a separate piece of legislation, we got 57 of my colleagues—a majority of Senators—to say, Let's say that market manipulation on contracts was wrong.

That language still exists in a conference committee on Agriculture appropriations. That language is sitting there hoping we will get it out of conference, even though the industry is lobbying against it. Yes, that is right. The remnants of Enron are lobbying against it.

What do we do? In this conference report, we basically change current Federal law and say those contracts shouldn't stand. We go one step further in the Federal Power Act and say manipulated contracts are not in the public's interest.

This legislation should be defeated alone on the fact that it continues the Enron price gouging. We as a body failed to stand up to that kind of activity. We can say all we want about the reforms we have with the SEC, all the reforms we had on auditing, but in our energy policy we have done nothing to be the policemen on the street. These energy companies, under this legislation, are still going to run free to continue to manipulate market. Not only that, we are putting in this bill that it is OK to do so.

I urge my colleagues: Please, in the next 24 hours review this legislation

carefully. It has so many issues that are the wrong direction for our country.

I urge my colleagues to stand up to the special interests that have promulgated this bill and say no to the conference report.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, Senator McCain is on the list we made as the next speaker.

I ask if I could speak for about 2 minutes before Senator McCain. He has indicated yes.

Mr. REID. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, fellow Senators, my good friend from the State of Washington went through a series of newspapers and read what newspapers had to say. I will not do that. But I suggest that she and other Senators, instead of reading what the newspapers have to say, read what their constituents have to say.

I want to cite some constituents of hers and of everyone else in the Senate and what they have had to say. The Solar Industry of America applauds this. They are the largest group of American businessmen involved in development of solar energy. They sent a letter in full support, along with the National Hydropower, American Coalition for Ethanol, Renewable Fuels, National Biodiesel Board, American Soybean Board, North American Electric Reliability Council. While we are on that one, let me suggest that the board that looked at the blackout we had in the Northeast and just issued a report. I will talk about it later.

Most interestingly, the biggest thing they found that caused that blackout was the violation of reliability standards. Those standards are in this legislation. That will not happen again. The study group says we have taken care of them in this legislation. Do not forget, if we do not pass this, they are out the window. Who knows when we will get back to them.

The National Rural Electric Coops of America, a letter of full support; the Large Public Power Council; the APPA, the American Public Power Association; Coalition for Renewable Fuel Standards—totally in support. I have a multi-industry letter in support of this bill from Interstate Natural Gas, National Association of Manufacturers, Ocean Industries, National Corn Growers, North American Manufacturers Association, Edison Electric Institute, and Domestic Petroleum Council.

Some day before the debate is over I will finish reading the names of groups supporting the bill. The point I make, it is one thing for the editors of our newspapers to write about a bill, it is another for the thousands and thousands of businessmen, large and small, who are going to benefit from this, to be writing what they think about the

bill. Remember, most of the things they are talking about are not in the law now. Throw away this bill and we have thrown away the things they say are necessary for their continued operation in the United States.

The biggest and most important is the wind industry in America, large and small, that produces wind energy for the United States. It is a growing new industry. Listen clearly: It is growing because it has a subsidy. For those who do not like subsidies, we can cut it off and there will be no more wind energy produced for who knows how long, maybe 10 years. Maybe that is what some would like. Without this bill, the current production credit for wind energy is gone. This bill starts it and continues it. It will be gone. It will not be there.

We can talk a lot about special interests, about where the money is going, where the \$2.6 billion a year is going over the next 10 years. We have an American energy use of \$450 billion a year. We are trying to move it around the edges. It does not seem to this Senator to be an exorbitant amount of money or an exorbitant effort to produce a variety of energies, diversity of source, and diversity of base so we are not totally dependent again on a source such as natural gas, soon dependent on it from overseas.

Overall, there are problems with the bill, yes; problems we had to concede, yes. But overall, it is a bill that will work.

I will answer MTBE concerns at least once a day, but I don't think two or three times a day. I have done it once. I will ask other Senators who are familiar with the subject, including the Senator in the chair, to answer these concerns. Suffice it to say, some of the descriptions about MTBE in this bill are wrong.

I have given my best shot at it, but I will close with a very simple example. If you use Folgers Coffee and produce hot water that is too hot, you sell it and burn somebody with the coffee, I doubt very much if you will sue Folgers Coffee. That is the issue of MTBE. It is a legitimate, valid product, certified by the United States of America to be used. For those who use it right, we have said they will not be liable. For those who use it wrong, and there are many who have, they will remain liable. In 15 years there will no longer be any more of that.

I say to the corn growers, we have the same issue looming over us on alcohol and ethanol. We have said there, too, the product is not liable; using it improperly does create liability.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I think this legislation is very timely because if we pass it, Thanksgiving will come early for the Washington special interests. The American public will be presented with an enormous turkey stuffed with their tax dollars. Tell your

constituents to save their holiday Turkey carcasses because this farsighted bill even provides subsidies for carcasses used as biomass to generate energy.

We cannot discuss the bill without looking at the fiscal condition of the United States of America today. According to recent reports, Government spending, thanks to the Congress, grew at 12 percent. We are looking at a half a trillion budget deficit next year. We have gone from a \$5 trillion surplus over the last few years to a multitrillion-dollar deficit. So what do we do? We are passing a bill that will increase the deficit by at least somewhere around \$24 billion.

By the way, I am really sorry we have not gotten the bill. I understand it is 1,200 to 1,600 pages long. Of course, we are considering it without even having a chance to observe it, but it is printed in the RECORD. I imagine the RECORD is pretty big.

Adding to this feast, this bill also contains the other white meat. Of course, I am referring to pork. I fear for the passage of a 1,200-page, pork-laden bill. The outbreak of Washington trichinosis will be so severe we will be forced to have a field office for the Centers for Disease Control right next to the Capitol. I am not saying this will not generate some energy, not at all. It will fill the coffers of oil and gas corporations, propel corporate interests, and boost the deficit into the stratosphere.

Indeed, I have stated on several occasions the name of this bill should be the "Leave No Lobbyist Behind Act of 2003." Given the magnitude of the largess offered in this bill, I hardly know where to begin. I feel somewhat like a mosquito in a nudist colony. I hardly know where to begin.

At a time when it is crucial for our national security and economic welfare that we pursue a new course toward energy independence and global environmental protection, the provisions in this bill take exactly the wrong direction: increasing our dependence on conventional fuels; increasing environmental degradation; increasing our energy use; increasing our national debt; and diminishing protection for consumers and public health.

Let's start at the top of the corporate subsidy heap. We have the biggest increase in corn and cash this Congress has ever seen, doubling the national ethanol mandate. A doubling. Gasohol production is the worst subsidy-laden energy use ever perpetrated on the American public, and it starts with sweet corn. Ten percent of the corn grown in this country is used to produce ethanol. Corn producers, like producers of other major crops, receive farm income and price supports.

Let me remind my colleagues in the 107th Congress this body passed a farm bill which appropriated more than \$26 billion in direct assistance to corn growers over 6 years. That is an average of \$4.3 billion in direct subsidies

each year just to corn growers. But obviously, they have not gotten enough. But add it up, and we are over \$3 per gallon of ethanol.

The cost to consumers does not stop with the production of energy. Environmental costs of subsidized corn results in higher prices for meat, milk, and eggs because about 70 percent of corn grain is fed to livestock. A GAO report concluded, "ethanol tax incentives have not significantly enhanced United States energy security since it reduced United States gasoline consumption by less than 1 percent." So if we double it, maybe we will have less than 2 percent. It takes more energy to make ethanol from grain than the combustion ethanol produces. Seventy percent more energy is required to produce ethanol than the energy actually in ethanol. Every time you make 1 gallon of ethanol there is a net energy loss.

The National Academy of Sciences concluded in 2000 that "the use of commonly available oxygenates in Reformulated Gasoline (RFG) has little impact on improving ozone air quality and has some disadvantages." They found that oxygenates can lead to higher nitrous oxide emissions, "which are more important in determining—ozone levels in some areas."

Reformulated gasoline, without oxygenates like ethanol, are widely available and are superior to gasohol. California has started a program called the "Cleaner Burning Gasoline," which has better fuel economy and overall efficiency than gasohol.

I believe it was in recognition of this fact that the House and Senate both passed Energy bills that would remove the Clean Air Act requirement to include an oxygenate in reformulated gasoline. But, the overall economic and environmental benefits of no longer requiring an oxygenate is wiped out by the \$2 billion ethanol mandate doubling ethanol production in this bill.

Another subsidy for ethanol producers is a partial exemption for the motor fuels excise tax, which is paid to the Highway Trust Fund. Presently, corn-to-gasohol producers take a \$.052 per gallon exemption from the \$.18 per gallon excise tax fuel producers are required to pay into the Highway Trust Fund.

According to a recent General Accounting Office study, between 1979–2000, this exemption has cost the Highway Trust Fund between \$7.5 and \$11.2 billion.

While a tax credit in this bill, called the Volumetric Ethanol Excise Tax Credit Act of 2003, attempts to change this trend, it merely provides the option for gasohol producers to pay the entire \$.18 per gallon excise tax to the Highway Trust Fund, and claim a \$.052 per gallon credit on their income tax. The credit would come from general treasury funds, and leave the Highway Trust Fund income in place, most blenders will continue to take the exemption, which is an immediate dis-

count, rather than switching to the credit. This is a useless provision which won't actually bolster the Highway Trust Fund, or the U.S. Treasury. In fact, with doubled ethanol usage, the Federal government stands to lose even more in fuel tax revenue in the upcoming years.

The national ethanol consumption in 2002 was 2.1 billion gallons. Multiply that by 52 cents per gallon, and you see how much revenue the highway trust fund has lost in excise tax in this past year alone. About \$1.1 billion. How much more, then, of taxpayer funds, will be given back to the ethanol producers, as ethanol production and consumption doubles? The Joint Committee on Taxation estimates that the ethanol mandate will cost \$2 billion over the next 5 years.

For decades the largest ethanol producer has been Archer Daniels Midland, producer of more than one-third of all ethanol in 2002, and whose nearest competitor has the capacity to produce one-tenth of ADM's capacity.

The excise tax exemption from ethanol has been estimated to account for more than \$10 billion in subsidies to ADM—one corporation with \$10 billion in subsidies—from 1980 to the late 1990s. In fact, it has been estimated that every dollar in profits earned by Archer Daniels Midland costs the taxpayers \$30.

Speaking of highly objectionable fuel additives, I must join my colleagues who have spoken against the MTBE liability waiver.

Mr. President, it is an outrage to see a product liability waiver for producers of MTBE retroactive to September 5, 2003. This nullifies the lawsuits against MTBE producers that were filed after September 5, such as the case last year in the Superior Court in California, where a jury found that MTBE was a defective product and resulted in a settlement in which MTBE producers agreed to pay more than \$50 million to clean up MTBE-contaminated water supplies.

Who is going to pay to clean it up now? This provision to shield MTBE producers from product liability could, according to the U.S. Conference of Mayors, cost taxpayers—taxpayers, not industry—\$29 billion to clean up contaminated ground and surface water.

In 1998, the U.S. Geological Survey conducted an MTBE survey of water wells in industrial areas, commercial areas, residential areas, and mixed urban areas nationwide, and also estimated that cleaning up the MTBE-contaminated sites in soil and water nationwide is approximately \$29 billion.

Just when you believe this bill cannot get any worse, it does.

Mr. President, \$800 million—I usually go through these bills, and we find pork in the hundreds of millions, sometimes billions. This exceeds all of my past experiences. Mr. President, \$800 million for a loan guarantee to subsidize the creation of a brandnew polluting, coal gasification plant in an

economically depressed area of Minnesota. This new company, Excelsior Energy, was formed by lobbyists and executives with ties to a company that filed for bankruptcy after amassing a \$9.2 billion debt and being fined \$25 million for market manipulation.

This brand new giveaway, which was in neither the House nor Senate-passed Energy bills, is estimated to cost between \$2 billion to \$3 billion. While this technology turns coal into a synthetic gas that can be combusted more efficiently, coal plants continue to be a leading source of global warming and should not be subsidized with scarce taxpayer dollars. Further, this \$800 million loan guarantee does not require Excelsior Energy to meet any concrete job creation goals or standards. In a time of \$400 billion annual budget deficits, why should U.S. taxpayers cover the cost of a new plant that will not even guarantee jobs? Minnesota already has a powerplant owned by Exel Energy. Now they need Excelsior Energy, a new plant burning more carbon?

Mr. President, \$95 million for a subsidy for a process known as "thermal depolymerization." This is a good one. Now you can get a tax credit if you compress Turkey carcasses into energy. ConAgra Foods and Changing World Technologies, the two companies that would benefit from this giveaway, have built the only commercial "thermal technology" plant, which is located in Carthage, MO. The plant would convert poultry waste products from ConAgra's Butterball Turkey plant into energy.

After including their cash cows and all the polluter pork they could find, energy conferees have now moved on to tax breaks for turkey. I encourage my colleagues to save their leftover turkey this year after Thanksgiving dinner. Instead of making sandwiches the next day, how about turning in your poultry for a tax credit?

An amendment was added Monday night—Monday night—to authorize the lignite coal-fired electrical generating plant, which would employ clean coal technology to provide energy for a rapidly growing region. This amendment was not included in either the House or Senate passed energy bills.

Another provision that we understand was inserted at the eleventh hour, and was never reviewed by either the House or the Senate, would suspend important environmental reviews to facilitate the construction of uranium processing facilities in New Mexico by the consortium, Louisiana Energy Services. A Time magazine article that appeared earlier this year raised serious questions about one of the consortium members, which it characterized as "a European consortium linked to leaks of enrichment technology to, yes, Iran, Iraq, and North Korea—as well as to Pakistan." The article in Time magazine quotes a high-level U.S. nuclear security administrator as saying "to have this company operating in the

U.S. after it was the source of sensitive technology reaching foreign powers does raise serious concerns."

I want to add, I do not know if that is true or not. I do not know if the Time magazine story is true or not. We do not know because we never had any scrutiny of the amendment. But I think it is a serious issue. I do not know.

In addition to possible security concerns suggested by the time article, this extraordinary rider raises critical environmental concerns.

Even though I understand that both Tennessee and Louisiana have rejected this facility, the Energy bill rider shortcuts the NEPA process and meaningful judicial review of the Environmental Impact Statement, for the construction of this facility in New Mexico. To add insult to injury, the provision further requires the Government to acquire the waste and dispose of it for a price that is possibly significantly less than the cost.

I ask unanimous consent the Time magazine article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Time Magazine, Jan. 21, 2003]

NUKES: TO PYONGYANG FROM NASHVILLE?
BACKERS OF A PROPOSED URANIUM ENRICHMENT PLANT HAVE A BAD HISTORY WITH KEEPING SECRETS

(By Adam Zagorin)

Is President Bush's "axis of evil" campaign about to be undermined in his own backyard? A proposed uranium enrichment facility planned in Hartsville, Tenn. (pop. 2,395) raises just that question. One of the plant's principle backers is URENCO, a European consortium linked to leaks of enrichment technology to, yes, Iran, Iraq, and North Korea—as well as to Pakistan.

Sources tell TIME that senior Bush appointees, upset by the ongoing crisis with North Korea, have held detailed discussions in recent days on the need to stop leaks of nuclear technology to rogue states. "To have this company operate in the U.S. after it was the source of sensitive technology reaching foreign powers does raise serious concerns," a high-level U.S. nuclear security administrator told TIME, the first public comment by a Federal official on the proposed plant's ownership. "The national security community or the new Homeland Security Department will need to look at this."

Concerns about URENCO first emerged more than 10 years ago when thousands of centrifuge parts, based on URENCO designs, were discovered by U.N. inspectors in Iraq after the Gulf War. A one-time URENCO scientist, known as the "father" of Pakistan's nuclear bomb, is said to have taken URENCO centrifuge blueprints and information on the company's suppliers to his homeland, later passing similar sensitive material to North Korea and Iran.

The company that wants to build the new Tennessee enrichment plant is called Louisiana Energy Services. A consortium of U.S. and foreign companies in which URENCO has a major financial role, LES insists that the link between URENCO and nuclear proliferation is "long ago and far-fetched at this point." URENCO itself has denied authorizing leaks of technology to rogue states.

The only previous attempt by LES to build an enrichment plant involved a multi-year

effort in the 1990's targeting a small town in Louisiana. Closed Congressional hearings on Iraqi attempts to acquire nuclear weapons were held not long before, and delved into URENCO's record. Subsequently, powerful Michigan Democrat JOHN DINGELL raised concerns that the LES plant in Louisiana might violate provisions governing the movement of classified technology from foreign countries under the Federal Atomic Energy Act. That issue was never resolved, but LES gave up attempts to build the Louisiana facility amid controversy over its impact on nearby African-American residents.

With its latest effort in Tennessee, LES seems especially anxious to avoid a reprise of those controversies. In an unusual move, LES has asked for a greenlight from the Nuclear Regulatory Commission without the usual public comment on various environmental, safety and security issues. But groups like the Sierra Club and the National Resources Defense Council contend that this will simply, "reduce the . . . licensing procedure to a flimsy rubber stamp." LES plans to file its 3,000 page license application with the Federal government by January 30, to be followed by a review process that could take at least a year.

Also controversial are unanswered questions about the disposal of the Tennessee plant's radioactive waste. Officials in Tennessee have reached a tentative agreement with LES to cap the amount of waste and, last week, the company announced that the material would not stay in Tennessee permanently. But it offered no details as to where the waste might be transferred, a process that can be subject to complex federal licensing procedures.

So far few Tennessee politicians have taken a position on the new enrichment plant. That includes Sen. BILL FRIST, the new Senate Majority Leader, who has remained neutral on the proposed plant in his home state. But he plans to follow the debate "very closely," says an aide.

Mr. MCCAIN. There are also four proposals known as green bonds that will cost taxpayers \$227 million to finance approximately \$2 billion in private bonds. One of my favorite green bond proposals is a \$150 million riverfront area in Shreveport, LA. This riverwalk has about 50 stores, a movie theater, and a bowling alley. One of the new tenants in this Louisiana riverwalk is a Hooters restaurant. Yes, my friends, an Energy bill subsidizing Hooters and polluters, probably giving new meaning to the phrase "budget busters." Although I am sure there is a great deal of energy expended at Hooters, I have never been present. Perhaps something has been missing in my life.

This bill was developed in a secret, exclusive, partisan process, but it is no secret anymore. In the last few days, editorials have appeared in papers throughout the country. Here are a few choice words from various papers.

One thing that is worthy of note, Mr. President, is that for the first time in my memory, the New York Times and the Wall Street Journal both editorialize strongly against this bill. It is on the rarest of occasions that the Wall Street Journal and the New York Times—the Wall Street Journal: "The Grassley Rain Forest Act," which refers to: "Special applause goes to Senator Chuck Grassley for grabbing millions to build an indoor rain forest and

a million-gallon aquarium in lush, tropical Iowa."

Of course, the New York Times editorial, titled "A Shortage of Energy," describes how the bill is a very serious one. Today China's message on energy—where it goes into a report from China—is that the Chinese are worried about their increasing reliance on foreign oil. The difference is, the Chinese are ready to do something about it, where Congress is not. Indeed, loopholes in the Energy bill could make American cars less efficient than they are. While the Chinese say their main concern is oil dependency, not global warming, more efficient cars should help on that, too. And where are our American leaders? Feathering nests rather than imposing discipline on the Nation's fuel use.

I will not go through all of the editorials that I have seen, but it is overwhelming. Everybody who has looked at this bill realizes that it is a terrible mistake. It seems to me that this is the result of a broken process, a process that is conducted behind closed doors.

I still do not have the bill in front of me. None of us do. I guess it is printed in the RECORD. I understand, because it is 1,200 pages long, the RECORD might be long.

There was very little, if any, consultation with other Members of the Senate. My understanding is the Democratic side was cut out of it completely. And we are given a few short hours to examine a 1,200-page "Energy bill."

I want to return to my initial comments. It is serious when we are looking at a \$½ trillion debt next year, when we have growth in the size of Government of 12 percent. What has happened to the Republican Party? What has happened to the balanced budget amendment to the Constitution? What has happened to the lockbox where we were going to take your Social Security money and put it into an account with your name on it? Instead, we have a \$20 billion and some energy bill loaded with wasteful porkbarrel projects most of us had not either seen or heard of until the last few hours.

I hope we can muster 40 votes—I hope so—because I think we have to restore some kind of fiscal sanity, some kind of environmental sanity to this Nation. This legislative process needs to be fixed.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I see the manager of the bill. Senator DORGAN is going to speak. It is my understanding that Senator COLLINS wishes to speak following Senator DORGAN. Does Senator DOMENICI wish to speak in between?

Mr. DOMENICI. No, I think I will wait.

Mr. REID. Does the Senator from Maine have an idea how long she is going to speak?

Ms. COLLINS. I say to the Senator from Nevada, about 12 minutes.

Mr. REID. Mr. President, I ask unanimous consent that she be given 15 minutes.

On our side, the next speaker would be Senator AKAKA. As we have done during this day, we have gone back and forth on speakers, so after Senator COLLINS, Senator AKAKA would be recognized.

Would you like to be recognized after Senator COLLINS?

Mr. DOMENICI. That is what I thought I said.

Mr. REID. And do you have any idea how long you wish to speak?

Mr. DOMENICI. Ten minutes.

Mr. REID. So Senator DOMENICI for 15 minutes and then Senator AKAKA. How long would he like?

Mr. DOMENICI. Could we substitute Senator INHOFE for me and my 10 minutes and I will come later?

Mr. INHOFE. Let's say 15. It probably will be 10.

Mr. REID. Just so we don't get the time out of balance, Senator AKAKA wants 30 minutes. So Senator DOMENICI would follow Senator INHOFE. Because we are taking a little extra time here, we would have two Republican speakers, INHOFE for 15 minutes and DOMENICI for 15 minutes following Senator AKAKA.

Mr. INHOFE. Let me make a request of the assistant minority leader. Since Senator AKAKA is going to take 30 minutes, would it be possible, after the conclusion of the remarks by Senator DORGAN and Senator COLLINS, to have me go so we would have two at this point and then go to Senator AKAKA for 30 minutes?

Mr. REID. That would be fine. He would be followed by Senator DOMENICI, and then we would have Senator JACK REED go after that for 20 minutes. Senator AKAKA for 30 and Senator REED for 20. I so ask the Chair to approve our unanimous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have had the opportunity to listen to some of the presentations today. I especially listened to my colleague from Arizona and found it interesting. This is a serious discussion for the Congress. I find much with which to agree with virtually all of my colleagues.

My friend from Arizona just described the serious fiscal policy problem. He says we are spending more money. He mentioned the Congress. It is true that spending is up substantially. The President has recommended very large spending increases for the military budget, very large spending increases for homeland security, very substantial cuts in revenue. We have a fiscal policy that does not add up. There is no question about that. It starts with the President's fiscal policy and begins and ends as well with the Congress. But we have to have a fiscal policy that adds up.

Our economy is dependent on energy. If we don't put in place an energy policy that addresses our concerns about energy and the need for this economy to be satisfied with the energy that is required, we won't have an economy that produces revenue and jobs. If, God forbid, tomorrow night a terrorist interrupted the supply of foreign oil, our economy would be flat on its back. Fifty-five percent of that which we use, in terms of oil resources, comes from outside our borders. Much of it from troubled regions of the world.

I have said for a long while that we need to do four things in an Energy bill. We need to incentivize additional production. The fact is, I want to see us move towards a different energy construct and a different energy future.

But we are going to use fossil fuels in our future. We are going to use coal, oil, and natural gas. So the question is, how do we incentivize additional production of those fossil fuels while at the same time protecting our country's environment, and then, importantly, how do we conserve? A barrel of oil saved is equal to a barrel of oil produced. Conservation is a very important part of an Energy bill. So you have production and conservation. Third, you have efficiency. The efficiency of all the appliances and the things we use in our daily lives is a very important area of conservation.

And fourth, and very important, the issue of renewable and limitless sources and supplies of energy. Those four things need to be in energy legislation.

I will describe what is wrong with this bill, and there is plenty. This bill was, in my judgment, constructed behind closed doors in a manner that was arrogant. It is not going to happen again. Never again are we going to allow conferees to be appointed here in the Senate and then have a conference in which Democrats are told they can't participate. That is what happened in this conference. That is not going to happen again. The next time someone asks consent to appoint conferees, we are going to ask the prospective chairman of that conference, Is this going to be a conference in which you close the doors and do it in secret with no Democrats included? Because, if so, you don't get consent. We are sorry. We are not going to proceed. This will not happen again because it is arrogant. It should not have happened this time. The process was wrong.

Let me talk about what that process has wrought. Some good things and some not so good. My colleagues have raised a series of concerns and objections about this bill. I agree with many of them.

I offered an amendment in the conference committee to deal with MTBE and strip the provision out of this bill that provides protection for those oil companies that produce MTBE, the fuel additive. That amendment was defeated. But I offered that amendment

because I feel strongly that this protection should not be in this bill. I strongly supported the amendment to put the Renewable Portfolio Standard in this bill. It ought to be in the bill.

The failure to include the 10-percent requirement for electric utilities to produce electricity, 10 percent of their electricity from renewable sources, that requirement needs to be in energy legislation. It is not here. That is a serious deficiency. There are others.

Let me also say that this bill has some elements that are important. In the area of production, providing incentives for production in certain areas is very important. Let me take coal as an example. Coal can cause some very serious consequences for our environment. But we are going to continue to use coal. So we need an aggressive provision in the legislation dealing with clean coal technology so that we can use coal in a manner that is not degrading to our environment. There is a very serious attempt in this bill to address clean coal technology.

This piece of legislation deals perhaps more aggressively than we have ever contemplated with respect to renewable and limitless sources of energy.

Wind energy. This extends the production tax credit for 3 years. We will see the unleashing, I believe, of substantial new projects to build wind farms in which you take energy from the wind and you extend America's energy supply. That will happen as a result of this bill.

Biodiesel, biofuels, a range of areas dealing with renewable sources of energy, are incentivized in a significant way in this piece of legislation.

My colleague spoke about ethanol. One of the strongest provisions in the bill, in my judgment, is doubling the requirement for ethanol in this country. We are banning MTBE, and for good reason. We are going to replace it with ethanol and double, to 5 billion gallons, the production of ethanol. Don't tell me that isn't good for this country. It is good to extend our energy supply by growing energy in the fields, and it is renewable. You can do it year after year. It produces new markets for family farmers, extends our energy supply, and is good for this country's environment.

Those who call ethanol a boondoggle, in my judgment, don't understand it. It is far preferable to extend our energy supply by growing energy in our fields, producing the agricultural commodity from which you extract the alcohol to make ethanol, have the protein feedstock for animals, extend our energy supply, clean our air, and relieve our dependence on foreign oil. That is a huge step forward for this country. It is not a boondoggle, it is good public policy.

Now let me talk about conservation just a bit. One of the things I have been very concerned about is something called efficiency. This deals with all the things we use every day—stoves,

refrigerators, toasters, air-conditioners—these appliances all use electricity. What are the efficiency standards by which we should aspire to conserve electricity and energy?

This bill includes nearly the identical efficiency standards that we wrote as Democrats when we controlled the Senate. That title, in this bill, is a good one. I support that title. It promotes conservation in a strong and positive way.

I believe my colleagues who talk about deficiencies in this bill with respect to the areas dealing with consumer protections are right. I am very concerned about that. But with respect to electricity reliability, the standards in this bill are good ones. They address the issues, not all, but most of the issues that are related to the recent blackouts, which caused electricity outages for 50 million people in this country.

As I mentioned before, there are several things in this bill I don't like. As I reviewed this measure last weekend, I asked myself whether or not we would advance this country's interest if we passed this legislation? I concluded that, yes, we would. But, we leave a lot behind. There will be a lot left to do and to correct if we pass this legislation, but, nevertheless, I concluded that deciding not to embrace the advancements in renewable and limitless supplies of energy would be a mistake. Deciding not to embrace those reliability portions in the bill would be a mistake because we need them. Deciding not to have the clean coal technology that will allow us to continue to use coal without degrading our environment—it would be a mistake not to embrace that.

To decide not to embrace the efficiency standards in this bill for virtually all of the appliances we use would be a mistake.

MTBE should not have been included and I tried hard to take it out. There are other provisions in this legislation that I don't like and they ought to be taken out as well. There are provisions that should be in the bill that are not there. The protections for consumers should have been stronger. If we are going to repeal PUHCA, then we need strong provisions protecting consumers. This falls short, in my judgment.

However, I believe, on balance, this legislation will advance our country's interests in energy production, and we need to produce more. Additionally, I believe this legislation charts a new course that looks at a different kind of energy future, a future I strongly support. That future is hydrogen and hydrogen fuel cells. I have been working on this initiative for a number of years, believing we cannot continue to run gasoline through carburetors. We cannot continue, as we have for a century, to just stick liquid gasoline through the carburetors and decide that is what our future is going to be. That is our past and we should realize if we keep doing that, we lose.

When we began producing automobiles in this country a century ago, we put gasoline through the carburetor. Do you know what we do with a 2003 car? We put gasoline through the carburetor.

The power from that gasoline is much less efficient than going to a different kind of energy future, using hydrogen and fuel cells, which would double the efficiency of getting power to the wheel. Hydrogen is everywhere. We can produce it, we can transport it, we can store it, and we can move toward a different future that will relieve us of our dependence on foreign oil.

I believe strongly that the \$2.15 billion in this bill for the hydrogen initiative should have been doubled. I fought like the dickens on the floor of the Senate and elsewhere for an increase in this funding. It did not happen. The fact is, a \$2 billion start is not insignificant.

The President proposed in his State of the Union Address something I had already introduced in the Congress as legislation, which is that we move toward hydrogen and fuel cells, as a new energy future. The reason it is important and the reason I support it is because the fastest rising part of our energy consumption is transportation. Why? Because we have decided our automobile fleet has, is, and perhaps always will be a fleet that has a carburetor through which you run gasoline. That doesn't make any sense to me.

We need to make a decision at this point. Let's pole-vault over some of these issues and create a new type of energy future. Some environmental organizations said that when the President proposed this initiative in his State of the Union he was just making an excuse not to deal with CAFE standards, and so forth.

I don't know what the motives are at the White House. I disagree with the President on a lot of things. But I do know this: If we just keep thinking that 25 years from now, and 50 years from now, our kids, their kids, and their grandkids ought to be running gasoline through carburetors, we lose. That is a philosophy of yesterday forever. I don't believe it satisfies the interests and the needs of this country.

You cannot be a world economic power without addressing the issue of energy. We use an enormous amount of energy. We need strong conservation standards, and, frankly, I looked at this bill skeptically last Saturday morning because I worried that the efficiency standards would not be there. But they were—almost the same standards we produced as a Democratic committee when we controlled the Senate.

We need conservation and incentives for new production of fossil fuels in a way that protects our environment. We need strong incentives for the use of renewables. But as important as those measures are, we also need to think differently about the future. That is why the hydrogen title in this piece of legislation is a step in the right direction.

My colleague from New Mexico is in the Chamber. He will not like the fact that when I started I said this process was an arrogant one. I told him during the process, at a time when I was a conferee and was locked out of the meetings, on the floor—and I don't care whether he likes my saying this or not—"You would not accept that in a million years. You would be shouting from the rooftops."

Again, because my colleague wasn't in the Chamber, this process was awful. This process will not happen again because we will not allow conferees to be appointed—we simply won't allow that—until the prospective chairpersons from the House and Senate agree to have real conferences, where both parties are allowed to have substantive discussions on the pending legislation.

Having said all that, and being upset about the way this conference process worked, my main interest today is what is in this legislation for the country. Does it advance this country's interests or does it retard them? Is this a huge giveaway that does nothing to address the country's energy interests? Is it just laden with pork? Is it worthless? Should we start over?

As I look at this bill in the four areas I talked about a year ago—production—production that is sensitive to the environment; conservation—conservation that is real; efficiency—efficiency that really does address those products that we use every day in our lives and the standards by which we improve them and make them more efficient; and finally, limitless and renewable sources of energy—in every one of those four categories, I think this legislation has provisions that commend it for the future of this country.

I can think of probably a dozen areas that I want to strip out of this bill, and I can think of a dozen provisions I want to put in this bill. I can't do that because this is a conference report, and also because I had limited opportunity to do it the other evening when we had a bifurcated, abbreviated conference.

Having said all that, I don't think in this Chamber you ever give up. The Renewable Portfolio Standard, that is coming. It was kept out of this legislation in conference because some people had the clout to do that, but it is going to happen. As sure as I stand at this desk in the Senate, I will demand and enough of my colleagues will demand, a renewable portfolio standard by which we say to the electric utilities in this country that 10 percent of what you produce must come from renewable energy. As sure as I am standing here, it is going to happen because we will make it happen. Not in this bill because it is a conference report and we cannot amend it.

The question is not what is left out or what is in. The question is, Does this product in the aggregate promote this Nation's energy interest as we move forward? Does it advance us or retard

us in terms of our desire to do something about energy? Although it is a tough choice, I conclude the right choice is to adopt this conference report.

I regret that I disagree with some of my colleagues. I am usually on the floor fighting for the same interests for which they fight for. I don't come to the floor to challenge their assertion that the MTBE provisions shouldn't be in here. I happen to agree with them. I don't challenge their assertion that there should be better consumer protections. I agree with them. But I also hope they understand that when you take a look at a bill which has something that is historic in renewable fuels and limitless fuels, limitless sources of energy—yes, ethanol especially, but wind energy, solar, and so many other areas of renewable energy—and when you have legislation that has real and significant standards of efficiency that represent significant conservation, and when you have legislation that incentivizes the current production of fossil fuels in a way that allows us to continue to use them in a manner that is safe for our environment, such as the aggressive use of clean coal technology, in my judgment—speaking only for myself—that meets the standard of deciding whether or not this legislation advances our country's interests.

Let us pass what is good and fix what is wrong. We have time to do that as we move ahead in the coming years.

For all of those reasons, I choose to advance this legislation.

Mr. President, I yield the floor.

Mr. DOMENICI. Will the Senator yield before he yields the floor?

Mr. DORGAN. I will be happy to yield.

Mr. DOMENICI. Mr. President, I have on my right a diagram. I wish it were bigger, but I think the Senator from North Dakota can see it.

The Senator spoke about midway through his speech about our growing dependence, and one of the dependencies he spoke of was natural gas. It is almost incredible—we should show the American people this diagram for them to see what has been happening to their country—the red or pink is the annual use of natural gas in our generating capacity for electricity. If we look back to 1990, the pink is hardly a little sliver, and go out to 2003 and we see that almost the entire generating capacity of the country is natural gas.

As the Senator from North Dakota has so eloquently stated this afternoon, it is clear we can't continue down that path. We have to do something about it.

First, I will take whatever criticism he has lodged today with reference to how the bill evolved. I guess it is pretty fair to say that very few people get the luxury, privilege—or whatever it is—of having to write one from beginning to end and get it to the floor. I was given that privilege this year. It could have been done a different way,

some of which the Senator from North Dakota has suggested. For that I thank him, and I hope we will do better if we have a chance again.

I also think that his genuine interest in hydrogen as a fuel is not going to go unnoticed. He is right out there ahead of everybody, and he is right.

Some people stand up and tell us: Why don't you change the CAFE standards and reduce dramatically the fuel use of each car that Americans drive? I don't know how the Senator from North Dakota feels about it, but I have been at it long enough to know that the Senate will not do it and the House will not do it. The question is to find another way to do it.

I think Senator DORGAN's notion of having to use another fuel is the appropriate one to be putting our resources, our energy, and our enthusiasm behind with our major researchers and our major companies. If what we got in here is not sufficient, I will join Senator DORGAN as soon as we can and try to put in more.

I would like to see what they do with some of the agreements that are advocated for the use of this money and how we use our technology to heat up that hydrogen so it is usable. I am sure Senator DORGAN would like to see that happen soon, too.

I thank the Senator from North Dakota for his words. Whether they be words that agree with me or words that disagree, I think his conclusion is the one that a vast majority of Senators should make, that we should not throw this package away. We should do it. I know one of his interests is ethanol, and I don't say this just because it happens to be a big interest of his, but there is no question that part of the bill that was hardest to get, and it took the longest and it made most of us frustrated was how do we get that maximum ethanol issue quantity that he described today. It was nigh unto impossible to get the numbers out of the House and out of their writing committees, but we did. We do not get any of these provisions, I regret to say, unilaterally, unscathed, with no commitments of any kind extracted. I am just hopeful that the good outweighs the bad in terms of the compromises we made to get us there.

In my State and Senator DORGAN's State and adjoining States, there are thousands of people who see this bill a little differently than some of those who don't care about ethanol. I heard a Senator say that wouldn't be part of a bill because he didn't think we even should do it, but I don't think that is the Senator's people. I don't think it is the thousands of people represented by these letters of support.

Second, the Senator from North Dakota is absolutely right on renewable resources. We are beginning to make a big show as Americans—solar, wind is beginning to kick up its heels. We have a very powerful tax incentive in this bill. If this bill doesn't pass, it doesn't exist. If it doesn't exist, I don't know

what happens to the fast start and the moving along of these technologies. I am not sure.

I have been told by the biggest manufacturers and those who sell this energy that it will stop. Windmills will stop turning within 3 or 4 months because the tax credit will disappear. I don't want that to happen, especially since we are making some very big headway.

I thank the Senator. I yield the floor.

Mr. DORGAN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. GREGG). The Senator has 6 minutes.

Mr. DORGAN. Mr. President, let me say with respect to wind energy, if the production tax credit isn't extended, the windmills will not stop turning. We have very efficient turbines, but the projects that are already planned and ready to go simply will not happen. We won't have the initial capacity for wind energy because without the production tax credit, it will not exist.

Let me make this point. If energy policy is analogous to a novel, then this is a chapter, and we might well decide this chapter ought to be rejected. I come to the conclusion that it is a chapter that is probably worthwhile and is a starting point. I want to at some point in the future amend it, change it, and improve it, but the choice for us is: Do we do nothing and pray that we don't have further black-outs or further price spikes, or, God forbid, a terrorist interrupting the supply of energy?

Or do we enact the proposed legislation and consider it the first brick of a foundation by which we start to construct an energy policy that provides the best of what both political parties has to offer? I come down on the side of believing this ought to be advanced.

There are a series of things I have explained that I believe are important in this legislation, so I will make one final point. Earlier, my colleague from Arizona talked about the cost of this bill. We have a \$10 trillion to \$11 trillion economy. This economy will only grow if it has a supply of energy. If tomorrow, for some reason, our supply of foreign oil were shut off, this American economy would be lying flat on its back. Talk about consequences for jobs and devastating consequences to opportunities in this country. We have to think through all of this and plan ahead.

This legislation is not as comprehensive, as wise, or as bold as I hoped it would be, but it is a start. I go back to the issue of hydrogen. My colleague talked about natural gas. We are going to face natural gas price spikes again this winter. We have serious supply problems. We have significant problems in a range of energy sectors, in the short and intermediary term with respect to supply and demand. I think we should offer no apology for supporting increased efforts to produce additional fossil fuels. We have to do that.

This legislation has something very important in it dealing with clean coal technology, which I strongly support. So I again regret that I come to a different conclusion than some of my colleagues. I hope my conclusion is right. At this point, as I look at this country's needs and as I balance legislation that has some good features to it, some good titles in it, with some things that should never have been put in it, as I balance all of that, I ask the question: Does this advance the country's energy interest? Do I believe on balance that it makes sense to proceed? The answer for me is yes, and that is why I intend to vote to support this conference report.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized for 15 minutes.

Ms. COLLINS. Mr. President, I rise to express my strong opposition to the conference agreement on the Energy bill we are debating today.

Our Nation needs a balanced energy policy that will increase supply, decrease demand, reduce our reliance on foreign oil, and protect our environment. Unfortunately, the Energy legislation before us fails to strike this necessary balance. In fact, it would be poor energy policy, poor environmental policy, and poor fiscal policy. It favors special interests, it contains billions of dollars in wasteful subsidies, and it fails to promote energy conservation. It would be bad for Maine's electricity consumers, it would be bad for Maine's manufacturers, and it would be bad for Maine's environment.

I am very disappointed that the renewable energy provision that I coauthored with Senator BINGAMAN was not included in the final version of this legislation. This provision would have required that 10 percent of our electricity come from clean, renewable energy sources by the year 2020. A majority of the Senate conferees voted in favor of this proposal, but unfortunately the House voted to remove it, thus passing up an important opportunity to increase fuel diversity, decrease natural gas prices, and reduce greenhouse gases.

This legislation would do very little to reduce our dangerous and increasing reliance on foreign fuels. The United States is nearly 60 percent reliant on foreign oil, and this number is projected to increase in the coming years, reaching as high as 70 or even 75 percent in the next decade to 15 years.

Senators LANDRIEU and SPECTER and I joined to offer an amendment to the Senate Energy version that directed the President to devise a plan to save 1 million barrels of oil per day by the year 2013. We did not dictate how that should be done. It could be done by increasing fuel efficiency standards for our trucks and cars. It could be done by moving toward more energy-efficient appliances. There are many ways that goal could be accomplished.

Not surprisingly, our amendment enjoyed widespread support in the Sen-

ate. In fact, it passed by a vote of 99 to 1. Inexplicably, the conferees voted to drop that provision from the final bill.

This legislation also contains numerous wasteful and very expensive subsidies, including a 5-billion-gallon ethanol mandate that will subsidize corn production in the Midwest at the expense of higher gas prices in New England. Ethanol is more expensive than gasoline. It is difficult to transport, it is of dubious value to the environment, and it does little to reduce our reliance on foreign fuels. In fact, studies show that it takes about 4 gallons of oil to produce 5 gallons of ethanol. If the goal were to reduce reliance on foreign fuels, we would be much better off increasing automobile fuel economy standards or mandating other achievable efficiency improvements.

The liability waiver for MTBE manufacturers also does not belong in this bill. The gasoline additive MTBE is a suspected carcinogen and has contaminated a number of ground water supplies in my home State of Maine, and I know it is also a problem in the home State of the Presiding Officer.

In 1998, for example, a ground water system serving 5,000 people and operated by the Portland Water District was contaminated by MTBE. This incident cost the Portland water district \$1.5 million. The liability provisions in this legislation will leave MTBE manufacturers with little incentive to help clean up contaminated water supplies. The likely result will be that municipal ratepayers will have to shoulder a majority of the cleanup costs.

The electricity title of this bill is particularly troubling to me because it is biased against the Northeast. Three months ago, the largest blackout in our Nation's history illustrated the fundamental flaws in a haphazard and poorly regulated electricity market.

Just today, the General Accounting Office, at my request, released a new report on electricity restructuring that analyzed the blackout and identified what steps should be taken to ensure greater reliability of the electric grid. Unfortunately, the recommendations that are in the GAO report fly in the face of what has been done in the legislation we are debating today.

Electricity regulators in the areas most affected by the blackout in the Northeast and the Midwest have stated that the Federal Energy Regulatory Commission, known as FERC, needs to move ahead with standardized electricity markets in order to improve the reliability of our markets. Since electricity flows across power lines without regard to State boundaries, we need clear and consistent electricity rules that apply to the entire Nation. Unfortunately, this legislation would actually prohibit FERC from moving ahead with standardized markets for another 3 years. I am astounded by that.

Earlier this year, many of us representing States in both the Northeast and the Midwest wrote to the conferees

to share our views on the electricity issues that were being debated in the conference. We quoted our regulators on the impact of delaying these FERC rules. Specifically, we stated:

Our States feel strongly that any delay of SMD [the standard market design] hurts efforts to provide reasonably priced and reliable electricity to consumers and businesses. In fact, Ohio Governor Bob Taft, in testimony before the House Energy and Commerce Committee, stated that he believes that any delay would "impose an intolerable risk on the nation."

He went on to say:

We urge you to reject proposals to further delay FERC's ability to address issues which have a direct effect on the cost and reliability of electricity, for millions of our constituents.

Mr. President, I ask unanimous consent the letters we sent to the conferees be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Ms. COLLINS. Mr. President, in view of our urging the conferees to not interfere with FERC going ahead with these commonsense and necessary regulations, you can imagine my disappointment to discover that this bill, in fact, delays these regulations by FERC for 3 years.

I am also very troubled by the subsidies for pollution control equipment for some of our Nation's dirtiest powerplants. Why should taxpayers pay for pollution control technologies for 40-year-old coal-fired powerplants that were grandfathered under the Clean Air Act? Recently, when three advanced natural gas plants were built in Maine, these plants installed state-of-the-art, advanced pollution control technologies without any subsidies, without being subsidized by the American taxpayers. The cost of this technology was borne by electricity consumers in the State of Maine and other States in the Northeast. The cost of electricity from the oldest coal-fired powerplants has long been subsidized through exemptions from the pollution controls mandated by the Clean Air Act. To further this subsidy by authorizing billions—billions—of taxpayer subsidies for the dirtiest plants makes no sense at all, and it will have the effect of continuing to ensure a disparity in the price of electricity between regions in which pollution and other costs are subsidized and regions such as ours, in New England, which are not the beneficiary of these subsidies. That is not fair. It is not fair to our taxpayers, and it is not fair to our electricity consumers.

I am further disappointed by the inclusion of language in the electricity title which will undercut the nationwide development of clean power generation. This language, which is known as the participant funding language, effectively negates the benefits of the combined heat and power provisions that Senator CARPER and I worked so

hard to include in this bill. The participant funding language actually creates a disincentive for clean energy generation by allowing monopoly utilities to shift the costs of transmission upgrades onto clean power generation, such as combined heat and power—the cogeneration plants.

This provision is particularly harmful to our manufacturers, many of whom use combined heat and power to generate products and jobs.

The last thing we need in this country is another disincentive for our manufacturers. In the Northeast in particular, manufacturers are already struggling to cope with high electric rates. The last thing we should be doing is shifting more of the costs on to them.

The legislation would also increase greenhouse gas emissions, waste natural gas and other already scarce fuels, and harm air quality.

The bill's failure to address climate change is yet another disappointment. It seems a near certainty that greenhouse gas emissions will increase by hundreds of millions of tons under this legislation. Yet the entire climate change title has been stripped from this bill. If we are going to spend billions of dollars on oil and gas and coal projects that will increase greenhouse gas emissions, then at least we should determine whether such an increase in emissions could cause an abrupt and potentially dangerous change in our climate.

Unfortunately, the abrupt climate change provisions that I authored were also omitted from the final version of the bill.

In summary, this bill does not offer the balanced energy policy that America needs. It does not do enough to increase energy efficiency or renewable energy. It does not promote conservation. It does not protect our environment. It does not give FERC adequate authority to provide reliable electricity markets. And it will not reduce our reliance on foreign oil.

I cannot in good conscience vote in favor of ending the debate on this legislation, and I call on my colleagues to take a close look at the provisions of this bill. I believe as they delve into this bill they will realize that it is fundamentally flawed and should be rejected.

In doing so, we would save the taxpayers some \$80 billion, and we would signal our support for a more balanced energy policy for this Nation.

I yield the remainder of my time.

EXHIBIT 1

U.S. SENATE,

Washington, DC, July 25, 2003.

Hon. PETE V. DOMENICI,

Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Hon. JEFF BINGAMAN,

Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DOMENICI AND RANKING MEMBER BINGAMAN: We are writing to urge you to continue our nation's efforts to move

toward competitive wholesale electricity markets that will benefit consumers and businesses. National competitive markets, where multiple buyers and sellers can negotiate bargains and pass cost savings along to consumers, are the best approach to the challenges facing the electricity industry.

We would like to bring to your attention a number of issues addressed in the electricity title of the Senate Energy Bill (S. 14) that have implications for residents and businesses in the Northeast-Midwest region.

Delay of Standard Market Design—S. 14 and the proposed substitute amendment delays the implementation of the Federal Energy Regulatory Commission's (FERC) standard market design until July 2005. Electricity markets have outgrown state boundaries. We are writing to express our concern with the proposed delay of standard market design and the provision to make participation in regional transmission organizations voluntary. The delay has serious implications for residents and businesses in the Northeast-Midwest region and throughout the nation.

A standard market design would streamline the wholesale electricity industry, encourage transmission investments and move the lower 48 states toward a more competitive electricity market. Congested power lines, which are the result of the current electricity system, cost customers and businesses throughout the United States billions of dollars each year, whereas competitive wholesale power markets could deliver billions of dollars in economic benefits.

Schwab Capital Markets detailed the importance of standardized markets to increasing investment in our nation's transmission grid and electricity generation.

Testifying before the House Subcommittee on Energy and Air Quality, Christine Tezak with Schwab states: "We believe that capital will be less expensive for all market participants if FERC continues (and is permitted to continue) its efforts to provide reasonably clear and consistent rules for this business . . . Schwab WRG continues to view continued efforts to move forward with the restructuring of the electricity industry to be the best investment environment for the widest variety of participants in the electricity marketplace—whether they provide generation, transmission, distribution or a combination of these services—and most importantly, the most likely to provide sustained long-term benefits to consumers." Further, Ms. Tezak stated: "Congress needs to decide whether or not it still believes in the 1992 Energy Policy Act. Today, Congress is becoming an increasing part of the reason capital is hard to attract to this business. Congress is calling for FERC to slow down, Wall Street is frustrated FERC won't move faster."

S. 14 makes participation of federal utilities in Regional Transmission Organizations voluntary. Federal taxpayer dollars were used to develop and maintain Federal power marketing agencies such as the Tennessee Valley Authority and Bonneville Power. The energy generated by these facilities should benefit all Americans. TVA and Bonneville should be required to participate in RTOs so communities throughout the United States have access to the power generated at these Federal facilities.

The Energy Bill must put national interest above the interest of a few vertically-integrated utilities that want to maintain regional monopolies. We encourage you to support standardizing electricity markets and prevent further delay of these efforts.

Participant Funding—S. 14 and the proposed substitute amendment directs FERC to establish rules to "ensure that the costs of any transmission expansion interconnec-

tion be allocated in such a way that all users of the affected transmission system bear the appropriate share of costs." The language requires FERC to fairly align the costs and benefits of transmission upgrades, a judgment that can include a consideration of relevant local factors. This is not only the most equitable approach but also the one most likely to ensure that transmission development will keep pace with growing electricity demand.

Combined Heat and Power—S. 14 currently contains the "Carper-Collins" language which keeps in place incentives to operate combined heat and power facilities until true competition exists in electricity markets. This language retains, for a limited time, the provisions of the Public Utility Regulatory Policy Act (PURPA) which require utilities to provide back-up power and buy electricity from qualifying combined heat and power facilities. As soon as competitive electricity markets are established, these requirements are repealed. Since combined heat and power saves energy, reduces greenhouse gas emissions, increases energy independence, and is good for the competitiveness of American manufacturing, we urge you to retain such provisions.

We urge you to complete the work Congress started with the Energy Policy Act of 1992 to provide reliable, low-cost electricity to customers. Please stand strong against pressure to reverse court on Congress' efforts to establish better working, competitive markets, and to continue working towards competitive electricity markets.

Sincerely,

Jack Reed, Olympia J. Snowe, Edward M. Kennedy, Arlen Specter, Susan M. Collins, Debbie Stabenow, Frank Lautenberg, Carl Levin.

U.S. SENATE,

Washington, DC, September 22, 2003.

Hon. PETE DOMENICI,

Chairman, Senate Energy Committee, Washington, DC.

Hon. JEFF BINGAMAN,

Ranking Member, Senate Energy Committee, Washington, DC.

DEAR CHAIRMAN DOMENICI AND RANKING

MEMBER: As the Conference Committee on the Energy Policy Act of 2003 continues its deliberations, we would like to bring to your attention an issue of great concern to us.

We believe the Energy Bill must set forth a policy that will complete the work that Congress started with the Energy Policy Act of 1992. The vision of Congress and President George H.W. Bush in 1992 was to transition our nation's electricity industry to competitive wholesale power markets. The vision of today's Congress should be to complete the transition to competitive markets by allowing the Wholesale Power Market Platform (WMP) of the Federal Energy Regulatory Commission (FERC) to move forward.

Wholesale power markets remain the best approach to optimizing our country's energy resources by increasing generation efficiencies, stimulating investment in new technologies and infrastructure, providing greater choice in energy sources, especially in renewable power, and passing cost savings onto consumers. Wholesale power markets have naturally grown into regional bodies, spanning multiple state boundaries. The recent blackouts that impacted many of our states clearly illustrate the regional nature of our electricity grid. Events that occur in one state have impacts in other states.

Moreover, while we respect the need for certain regional variations among power market structures, we firmly believe that any Energy Bill should not harm those regions of the country that want to move forward with efforts to bring the benefits of

competitive power markets to consumers. Accordingly, we urge the passing of an Energy bill that will appropriately reflect the physical and business realities of the electricity business by allowing the FERC to implement its WMP.

The FERC's Standard Market Design proposal and subsequent Wholesale Power Market Platform are the logical and necessary responses to the problems experienced by nascent regional wholesale power markets. WMP seeks to standardize market rules while adhering to regional variations and allows FERC to oversee the process of Regional Transmission Organization (RTO) formation and participation. The timely implementation of WMP is critical in achieving the efficient, seamless, and non-discriminatory wholesale power markets that will optimize our nation's energy resources. Delay will only serve to further injure much needed investment in generation, transmission and demand response facilities that are the foundation of our nation's economic well-being.

The health of our state economies depends upon the free flow of interstate commerce governed at the federal level to ensure consistent, clear and fair laws over state lines. Similarly, vibrant competitive power markets rely on the free flow of electrons through state and regional boundaries. To the extent there is a standard set of rules, states with either competitive retail markets or vertically-integrated utility service will benefit in terms of greater efficiencies, greater reliability and reasonably priced electricity that our homes and businesses need.

Furthermore, a delay in the implementation of the SMD rulemaking will only serve to add uncertainty to potential investments in our energy infrastructure and negate years of progress made in the rulemaking process by the FERC, state commissions and market participants alike. Consider the testimony of Christine Tezak of Schwab Capital Markets before the House Subcommittee on Energy and Air Quality: "Congress needs to decide whether or not it still believes in the 1992 Energy Policy Act. Today, Congress is becoming an increasing part of the reason capital is hard to attract to this business. Congress is calling FERC to slow down, Wall Street is frustrated FERC won't move faster."

Specifically, we believe that an energy conference report should:

Support FERC's Efforts to Promote Competitive Wholesale Markets—Our states feel strongly that any delay of SMD hurts efforts to provide reasonably priced and reliable electricity to consumers and businesses. In fact, Ohio Governor Bob Taft in testimony before the House Energy and Commerce Committee stated that he believes that any delay would "impose an intolerable risk on the nation". We urge you to reject proposals to further delay FERC's ability to address issues which have a direct effect on the cost and reliability of electricity for millions of our constituents.

Promote Regional Transmission Organization (RTOs)—Effective, well-functioning regional transmission organizations and independent system operators are necessary for the creation of well-designed, competitive regional markets. The Electricity Title should not disrupt existing regional markets nor stall their development in regions that want to develop them. RTOs and ISOs are a key to effectively managing the increasingly interstate flow of electricity and are critical to the success of electricity restructuring. Increased participation in RTOs will help address the structural problems in our grid that created conditions for the recent blackout. RTOs will help our nation improve our ability to respond to problems in the grid by

having an effective regional "traffic cop" with a reliability mission to manage any future incidents. They will also help improve the climate for investment in transmission infrastructure to enhance the reliability of the grid in the first place.

We urge you to complete the work Congress started with the Energy Policy Act of 1992 to provide reliable, low-cost electricity to consumers. Please stand strong to continue the efforts of Congress to establish well-functioning, robustly competitive wholesale power markets while creating a federal policy that would bring much needed certainty to our nation's energy sector.

Thank you for your consideration of these comments and we look forward to working with you to ensure the Electricity Title respects the difference among regions while moving forward with efforts to bring the benefits of competitive power markets to all American consumers.

Sincerely,

Rick Santorum, Jack Reed, Olympia J. Snowe, Edward M. Kennedy, Lincoln D. Chafee, Thomas R. Carper, John Cornyn, Jon S. Corzine, Arlen Specter, Frank Lautenberg, Barbara A. Mikulski, Mike DeWine, Joseph R. Biden, Jr., Carl Levin, Susan M. Collins, Paul S. Sarbanes, Peter G. Fitzgerald, Debbie Stabenow, Evan Bayh, Richard G. Lugar.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I have been listening to the debate. I have come to some conclusions. First of all, one of the things the Senator from Maine said that I agree with is this bill does little to reduce our reliance upon foreign countries for our ability to run this great machine called America. I would like to have had more provisions in there. I would have liked to have had some more generous nuclear generation provisions, maybe ANWR, and a few things that would more directly address this. I am hoping we will be able to do this in the future.

The Senator from North Dakota, when he was talking about the bill, said there were several things in here that he didn't like, and many things in here that he would have liked to have had in here. I feel the same way. That is almost by definition the sign of a good bill because neither one of us is real happy with it. However, we both are going to support this bill.

I think we could have gone further. I have been concerned for many years about our dependency, going all the way back to the Reagan administration when Don Hodel, who was the Energy Secretary at that time, and I used to go around the country to explain to people in consumption States that our reliance upon foreign countries for our ability to fight a war is not an energy issue but a national security issue.

Finally, this is the first approach. I have to say President Reagan didn't really address this, the first President Bush didn't address it, President Clinton didn't address it. This President is addressing it. This may not be perfect, certainly it is far from perfect, but it is the first major step since 1980 to correct a problem we all agree is there.

In deference to the time that we have here I am going to concentrate on one

thing. There are a lot of things I would like to talk about because I chair the Environment and Public Works Committee. There are a number of issues that are within my jurisdiction. I thank the manager of this bill, Senator DOMENICI, for his willingness to let me have input even though I am not on the conference over some of these issues that would have been in my committee.

My concern right now, and what I want to address, is the whole idea of the ethanol and MTBE safe harbor provisions. It has been treated as a red herring. I would like to go over what it really is and what it is not. What we have heard on the floor is good rhetoric from the trial lawyers, but it is not factual.

The premise of the ethanol and MTBE safe harbor is simple: If the Federal Government approves and mandates a product, such as it did with ethanol and MTBE, that product should not be considered "a defective product by virtue of the fact that it is, or contains, such a renewable fuel or MTBE." So let's walk through this and see what the safe harbor provision does.

The ethanol and MTBE safe harbor states:

Notwithstanding any other provision of Federal or State law, no renewable fuel, as defined by section 211(o)(1) of the Clean Air Act . . . used or intended to be used as a motor vehicle fuel containing such renewable fuel or MTBE, shall be deemed a defective product by virtue of the fact that it is, or contains, such renewable fuel or MTBE.

That stands to reason. That is perfectly legal. Yet that is the provision to which most of these people are objecting. How can it be reasonable if we mandate something by law and then turn around and say it is defective by definition? It is just not reasonable.

We know that Congress is mandating renewable fuels in this conference report. The energy bill states:

Not later than one year after the enactment of this subsection, the Administrator [of the EPA] shall promulgate regulations ensuring that motor vehicle fuel sold or dispensed in the United States . . . contains the applicable volume of renewable fuel. . . .

That is in essence the language of the legislation that we are considering today.

MTBE was also similarly mandated. The Clean Air Act Amendments of 1990 signed into law by the first President Bush clearly states:

[t]he oxygen content of gasoline shall equal or exceed 2.0 percent by weight. . . .

At that time, Congress knew the only two additives that could be used were MTBE and ethanol. And the Record shows that.

For example, on March 29, 1990, Senator TOM DASCHLE, the author of the floor amendment that established this 2-percent standard, stated during debate:

The ethers, especially MTBE and ETBE, are expected to be major components of meeting a clean octane program.

Under certain forms of an oxygenate mandate, Senator DASCHLE went as far as to note that:

EPA predicts that the amendment will be met almost exclusively by MTBE, a methanol derivative.

Senator DASCHLE recognized what we all know: There are substantial benefits to using MTBE as far as environmental protection is concerned. In the floor debate on the 2-percent standard, Senator DASCHLE cited evidence that:

NO_x, hydrocarbons, and carbon monoxide are dramatically reduced by adding the oxygenate MTBE to gasoline.

So it is clear that Congress mandated ethanol and MTBE in 1990, and, in this conference report, is increasing the mandate on ethanol.

Let me go on reading the ethanol and MTBE safe harbor. The safe harbor applies only:

If it [ethanol or MTBE] does not violate a control or prohibition imposed by the Administrator of the Environmental Protection Agency under section 211 of such Act, and the manufacturer is in compliance with all requests for information under subsection (b) of such section 211 of such Act.

So the safe harbor in this conference report applies only if you are in compliance with all the tough fuel requirements of the Clean Air Act.

So to review so far, if ethanol or MTBE is used as required by the Federal Government and is in full compliance of the Clean Air Act, it should not be found defective. Alternatively, if a party does not meet the requirements of the Clean Air Act, the safe harbor does not apply, stating that:

the existence of a claim of defective product shall be determined under otherwise applicable law.

It can still be exercised if they don't comply.

Most importantly, the safe harbor does not impact numerous legal mechanisms available for cleanup and damages. Specifically, the safe harbor states that:

Nothing in this subsection shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence for spills or other reasonably foreseeable events, public or private nuisance, trespass, breach of warranty, breach of contract, or any other liability other than liability based upon a claim of defective product.

In all those other cases, it remains unchanged. The safe harbor does not apply to anything except liability based upon a claim of defective product, assuming they have complied with the Clean Air Act. It is as simple as that.

As the energy conference report clearly states, the safe harbor does not affect liability under other tort theories. Tort law provides a remedy when there is a breach of a duty resulting in harm to a person, property, or intangible personal interests. The following types of actions have been used in environmental cases. These are actions where recovery took place:

Trespass—interference with the plaintiff's possessory interest in his

land. Is that affected by safe harbor? No.

Nuisance—interference with the plaintiff's use and enjoyment of his property—that is not affected by safe harbor.

Negligence—may be a basis for product liability actions, as well as actions involving the release of allegedly toxic materials. negligence could be based on the design of manufacture of the product, or failure to give warnings necessary to make the product safe. Is this affected by safe harbor? No. It is not affected.

Breach of implied warranty—similar to strict products-liability—is not affected by safe harbor.

Under breach of express warranty—if a manufacturer, distributor, or retailer makes express promises regarding a product, the party is liable if the product fails to perform as promised and that failure leads to injury. It is not affected by safe harbor.

The only thing that is affected is in the areas we have been discussing.

Moreover, this safe harbor in no way shape or form impacts any environmental law. The safe harbor provision would not affect liability, and therefore response, remediation and cleanup, under Federal and State laws. The facts of a given situation would dictate which of the following statutes would be most appropriate for an action. Here are examples of environmental laws that could apply. The following are not impacted: The Resource Conservation and Recovery Act, RCRA; Clean Water Act; Oil Pollution Act—OPA; Comprehensive Environmental, Response, Compensation, and Liability Act—CERCLA or Superfund; not to mention natural resource damages available under OPA, CERCLA, and the Clean Water Act. They are not impacted.

Furthermore, the leaking underground storage tanks provision in this energy conference report greatly enhances the amount of resources available to states and localities through the underground storage funds.

If the language and the impact are so clear, why is the debate so muddy? The answer is because trial lawyers stand to lose billions.

What is the positive affect of this safe harbor?

Liability protection is consistent with environmental protection. Without some stability in liability risk, powerful disincentives will be created to continued manufacturing of clean-fuel additives. Why should we manufacture clean fuel additives if there is no protection? Clean fuel programs have saved thousands of lives across the country. Opposition to commonsense legislation may endanger those most susceptible to air pollution impacts by reducing the ready supply of clean fuel additives.

Failure to limit liability endangers future energy security and clean air. Simply put, additive manufacturers will be extremely reluctant to invest in MTBE replacement additives without

some sense of certainty that the Federal Government will not allow those investments to become the basis of undue liability. In other words, as additive manufacturers seek access to capital, demonstrating a responsible Federal role in liability limitation may be crucial to justify future investments in clean additive manufacturing. It is simply a supply and demand argument.

In conclusion, I ask my colleagues to look at the facts. The fact is that the safe harbor is a fair and important provision in an important piece of legislation, which is critical to our national and economic security.

The safe harbor only applies to defective products claims.

I believe very strongly we need to have that clarification.

I repeat one more time what is actually written into the law. It says if the Federal Government approves and mandates a product such as ethanol or MTBE, that product should not be considered a defective product by virtue of the fact that it is or contains such renewable fuel or MTBE which is mandated by law. I appreciate the opportunity to clarify that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I rise today to express a profound sense of disappointment. The Nation needs an energy bill. We need a comprehensive blueprint for an energy policy that will take us in new directions, away from dependence on declining reserves of fossil fuel and foreign sources of oil. We need a policy which will reconcile growth and energy conservation in our transportation, manufacturing, utility, and consumer sectors across the nation. We need to bring down the high costs of electricity and gasoline for the country, particularly in my state of Hawaii, and pursue greater energy independence from petroleum products. The conference report does not make these goals achievable.

I believe a comprehensive energy bill is possible. As a senior member of the Senate Energy and Natural Resources Committee, I am familiar with cutting-edge technologies and approaches to generating energy. I was closely involved in crafting the energy bill that we considered earlier this year under Senator DOMENICI's leadership. I also contributed heavily to the energy bill that passed the Senate under Democratic leadership last year.

I wish to thank the senior Senator from New Mexico for his persistence in drafting this energy bill under extremely difficult circumstances. The energy policies that we are addressing in this legislation cover a vast range of authorities and a patchwork of unruly regional alliances. This translates to an enormous challenge, and I appreciate Senator DOMENICI's hard work in the face of this intractable situation. I want to make it clear that I have not given up on the opportunity to have an energy bill and I will continue to work

with my colleagues to shape an energy bill for the continental United States as well as for Hawaii and Alaska, which often have special energy needs.

Unfortunately, the report that has emerged from the conference committee does not bear much resemblance to either of the two earlier bills, this year or last year, that had bipartisan support. I rise today to express my disappointment with the outcome of the conference report for several reasons.

I am particularly concerned about Title VIII, the hydrogen title. During the Committee's consideration of S. 14 earlier this year, the hydrogen title authorizing research and development, demonstration projects, and buy-back and fleet provisions was carefully worked out by a bipartisan group of Senators on the Committee. Even though my colleague from Iowa, Senator HARKIN, is not on the Committee, he contributed mightily. The hydrogen title was based on the Spark Matsunaga Hydrogen R&D Act, which has been the basic authority for federal hydrogen programs for the last 20 years. I introduced a bill to reauthorize the Matsunaga Act earlier this year, along with Senators DOMENICI, BINGAMAN, BAYH, LIEBERMAN, KYL, REID, and INOUE. I continue to believe that the Matsunaga Act's basic focus on renewable R&D for the production of hydrogen is a critical component of a national hydrogen R&D program. I greatly appreciate the vision of Senator DOMENICI, who led the effort earlier this year to craft the hydrogen title in S. 14, along with myself and Senators BINGAMAN, DORGAN, ALEXANDER, WYDEN, SCHUMER, and HARKIN who dedicated time and energy to the bipartisan compromise. Title VIII was agreed to unanimously in the Committee in markup.

Title VIII, as it was crafted earlier this year, contained a robust authorization of hydrogen research, development, and demonstration projects to lead us into the hydrogen future. The title was later successfully amended on the floor during debate on S. 14, led by my good friend and colleague from North Dakota, Senator DORGAN. Senator DORGAN offered an amendment, which I cosponsored, to include important measurable goals and timelines for the commercial introduction of hydrogen fuel cell vehicles.

The federal government should be a leader in introducing hydrogen to the federal fleet of cars, trucks, and vans that are used to accomplish our government's business. Not many people realize it, but the federal government has a fleet of about half a million transportation units that, as a by-product of using fossil fuels, emit nitrogen oxides, ozone, and other pollutants. The original hydrogen title sought to usher in a transition to a fuel cell fleet.

The revised hydrogen title in the conference report eliminates key federal purchase requirements for vehicle fleets, stationary power, and hydrogen

fueling infrastructure. It provides only the vaguest guidance to the Secretary of Energy of voluntary projects to shape demonstration programs.

Why are we going to spend \$1.4 billion over six years on the production of hydrogen energy by way of a demonstration project using nuclear energy to produce hydrogen? We cannot decide what to do with our nuclear waste as it is now. Why are we going to produce waste by using nuclear material to produce hydrogen? We need to explore the production of hydrogen using renewable resources, and we need to spend a great deal more on it than this conference report provides. Hydrogen may fuel the economy of the future, but we must take action now to ensure that it comes from renewable sources for those parts of the country that will not or cannot host nuclear facilities.

The new hydrogen title, authorizes less funding through 2008 than we agreed on in the Senate earlier this year. It eliminates key demonstration programs and federal purchase requirements that I believe are critical to ensuring a hydrogen future. Mr. President, the hydrogen title is a pale ghost of what it was when it left the Senate on July 31st of this year.

This bill has some hopeful features. It provides tax incentives for wind, solar, and geothermal energy—but not enough. It encourages energy efficiency in household appliances and homebuilding. I am pleased that the report contains provisions that I specifically requested for energy studies in Hawaii and insular areas, and for non-contiguous areas to opt-in to the ethanol trading system. I thank Senator DOMENICI and Senator BINGAMAN for their assistance on these provisions, which take into account the unique energy situation faced by more remote states and territories. I also am pleased that Senator DOMENICI has included provisions of a bill I introduced earlier this year, S. 1045, to designate an office in the Department of Energy and a process within the Department for safely disposing of Greater-Than-Class C, GTCC, radioactive waste. According to a General Accounting Office study that I requested on this topic, we need a stronger plan for continued recovery and storage of GTCC waste until a permanent disposal facility is available.

The conference report has some objectionable features. It provides waivers for manufacturers of MTBE, thus leaving it to counties and cities to pay for the cleanup of groundwater contamination. There must be a better solution than that. We cannot leave the burden of cleaning up drinking water contaminated by gasoline additives to local communities.

The conference report also has objectionable omissions. It does not include fuel economy standards which significantly increase the fuel efficiency of automobiles—a vital component of a comprehensive energy policy. The American people want to spend

less money on gasoline, be less dependent on foreign supplies of oil, seriously address the issue of climate change, and breathe cleaner air. Strong fuel economy standards address these needs. The conference report fails to address the accumulation of greenhouse gases, which I have spoken about several times on the floor of the Senate.

Mr. President, I am disappointed in the conference report. It will not open the door for radically new energy futures such as hydrogen or even liquefied natural gas. It will not alleviate the high prices of energy in the Nation. And it will not reduce our dependency on foreign oil.

I yield back the remainder of my time.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, the Senator from Louisiana is recognized.

Mr. REID. Madam President, if the Senator will yield for a question, through the Chair, how long does the Senator wish to speak? There are other Senators who wish to speak. There is no rush. I want to know when they should come over.

Ms. LANDRIEU. Approximately 15 minutes.

Madam President, I join my colleagues on the floor to make relatively brief remarks about this very important energy bill.

As a member of the Energy Committee that has worked very hard to produce this bill, and as confident as I am that a majority of the people in Louisiana want us to produce a good and balanced bill, I want to stand to support the bill that is before us and to urge our colleagues to vote yes on this measure. I commend the chairman from New Mexico and the ranking member from New Mexico on the Senate side and the chairman and the ranking member on the House side for producing a bill that is truly the best bill this Congress can produce.

Is it a perfect bill? Absolutely not. Does it leave some very important sections out that many of us would like to see? Absolutely yes. Does it address every regional concern? No. And no national bill, no bill that comes out of this Congress, would ever be able to make each region perfectly happy because energy, of all issues, is not really a Democrat or Republican issue. It really is based on the regions of the country from which we all come.

Some regions consume a great deal more energy than they produce. Some regions and states, like Louisiana, are a net exporters of energy. We are proud of that fact. We get beat up a lot about it from people who do not necessarily understand the oil and gas industry, but we are proud to drill in environmentally sensitive ways for oil and gas and proud that we contribute so much to nations energy supply.

So we will never have a bill that is going to satisfy the regional and parochial interests of every Member. I am convinced, having worked on this Energy bill, or something like it, for the

7 years I have been in the Senate, that this is the best bill this Congress can put forward.

The second point is, after we pass this bill—and I am confident we will pass and the President will sign it, there is nothing that prevents us, either individually or as a Congress, from stepping forward in the next few months or years to make improvements and adjustments to the bill. We can continue to push for policies that increase our supply, increase new and renewable fuels, improve our conservation, and make this Nation more energy self-sufficient.

But we have not had an Energy bill since 1992. In that bill, Congress revolutionized wholesale electricity markets, encouraged renewable energy production through tax incentives and streamlined and reformed the licensing for nuclear facilities.

In this bill, one of the things I am proudest of, working with Senator DOMENICI, is to improve, increase and facilitate the construction and licensing of new nuclear facilities because I believe it is time for the United States to have a renaissance in its nuclear industry, so we can increase the supply of energy and drive down prices for all of our consumers, whether they be residential, industrial, or commercial.

For the life of me, I cannot understand why the United States cannot recognize the importance of nuclear energy as a component of our energy policy. Many developed countries, such as France, have realized the new and exciting technologies in this area that make nuclear safe, clean, and reliable. In France, approximately 80 percent of all their electricity consumption is produced by nuclear power.

I am also very proud of the fact that we have, for the first time, recognized the tremendous contribution that Louisiana and Texas and, to a certain degree, Mississippi and Alabama make in producing oil and gas off of our shores.

We have sent to the Federal Government billions and billions of dollars of tax revenues. We have produced many jobs. We are doing our part in Louisiana to make our Nation energy self-sufficient, and we are proud of it because we think for every hour we work, every month we contribute, every year we send money, we put our troops less at risk having to defend America's interests for oil and gas and energy supplies around the world. It is something that people in Louisiana are very proud of.

The fact is, there is something for all of us to gain from this compromise bill. We need to move forward on this bill, in my opinion.

No. 1, it increases our domestic production of energy and, therefore, lowers the prices for everyone. It is hard to estimate what the lowering of the prices will be, but this bill addresses that concern and make steps towards providing a variety of energy sources.

Second, it creates new jobs. So for everyone who is concerned, it lowers

unemployment. There is not a Senator in this Chamber who is not concerned about increasing employment rolls and lowering unemployment rolls. This bill, by creating hundreds of thousands of jobs, will, in essence, do that.

We also take steps to conserve, not as many steps as this Senator would have liked to take. I appreciate the comments of the Senator from Hawaii and others, including Senator DORGAN, who spoke about the missed opportunities in this bill. They encouraged us to really step up for conservation measures and I agree. The Presiding Officer made some very appropriate and, I thought, discerning remarks about our missed opportunities for conservation. We have missed some opportunities, but there are still, in this bill, some very excellent conservation and research and development initiatives to be proud of.

I might remind the Democratic caucus, our No. 1 objective—not my No. 1 objective but the No. 1 objective of our Democratic caucus—was not to drill in ANWR. There is no drilling of ANWR in this bill. Other Democrats objected to more drilling off the coast of Florida. There is no more drilling off the coast of Florida in this bill. There were Democrats who objected to drilling in the Great Lakes. There is no drilling in the Great Lakes. So for those who wanted not only energy conservation but, in their view, environmental protections, this bill represents that compromise.

Let me say a word about natural gas because it is very important to Louisiana. Demand is exceeding supply and prices have been abnormally high for the better part of this year. The growing gap between demand and supply has been apparent for some time. Presently our demand is 22 trillion cubic feet annually. The Energy Information Administration projects that the demand will increase by over 50 percent by the year 2025. There is a naturally occurring abundance of natural gas. If we don't do something about producing more of this precious resource the gap between what we need and what we consume is only going to grow. We must act now. If we don't, the problem will continue to drive up prices and make our industries noncompetitive with industries in Europe and Asia, Africa, and other parts of the world. Natural gas is at the heart of helping this Nation to secure and stabilize its employment sector.

In the short term, we provide royalty relief for ultra deep gas wells, something I worked on. I am proud that is in this bill. In the long term, the bill provides for the construction of a natural gas pipeline—a great deal of controversy. The bottom line is this pipeline could bring 65 trillion cubic feet into the market over the next 10 or 20 years. It is gas we need, gas we are going to use, and gas that will lower prices.

In addition to all of that, it is going to put several hundred thousand people

to work. Whether you are in Alaska or other States, a lot of people could use jobs right now. This is a jobs bill.

Let me say a word about coal. We don't produce a lot of coal in Louisiana, but there are some States that do. I guess I have a great deal of sympathy for States that, like Louisiana, utilize their natural resources. West Virginia and Pennsylvania are natural resource-based States. Why shouldn't the people of those States get to use the natural resources they have to create jobs and to do it in a way that helps keep the environment clean?

We have some clean coal technology in this bill. It might not be perfect, but what is the alternative? Shut down all the coal mining in the country, put thousands of people out of work, and drive up energy prices? Let's use the technology and encourage the development of even better technology. We have over 250 years of coal reserves in this Nation. The people of our Nation deserve to use those reserves responsibly to their benefit.

I am proud that this bill includes some important renewable fuel standards. In addition to some of the other issues that have been discussed in this bill, we promote wind power. That is very exciting. You wouldn't imagine, though, that we are going to have some of the same interesting debates we have had over oil and gas production; that is, "not in my backyard." I want the energy, but I don't want to see the rigs.

I was quite amused by the fight that went on in Massachusetts or off the east coast about where we are going to put the windmills. People want wind power, but they don't want the windmills that produce the power. Unless our technology can put windmills underground and have the wind go underground, I don't know how we can avoid the aesthetics issue.

Since I am used to seeing oil rigs, I kind of like the way they look and most certainly enjoy fishing around them because they make excellent places to fish that we in Louisiana have understood now for quite some time. I am encouraging wind power and hope we won't have the same "not in my backyard" attitude that we have had about other ways to produce energy. Certainly, wind is a very interesting source of power and evidently something that we will never run out of. It is an endless supply.

We are encouraging wind power in this bill and solar energy which is quite exciting. I happened to visit some of the most outstanding solar institutes in the world, one of my last visits to Israel several years ago. I was very encouraged by the technology that is ready to come on the market with the right kind of encouragement and incentives. Many of these are in this bill. We can create new building materials that can lead the way to the 21st century.

This bill includes \$300 hundred million for solar programs, several hundreds of millions of dollars for wind

and energy production, and \$500 million in grants for biomass programs. Biomass is another example of a new and exciting technology which takes other materials to create energy. It serves to move us to a more diverse portfolio of supply to produce the energy we need for our Nation.

Another important part of this bill is the increased authorization for the Low Income Heating Assistance Program. Being from Louisiana, a State that is hot most of the year, and that we have had a hard time explaining to people that you can die from heat as well as die from cold, we have not been able to get the low-income housing assistance program directed to Southern States. This bill accomplishes that. For Southern States, this is very important to help our people who pay high energy bills and need the air-conditioning, not for comfort but literally to keep them from dying or expiring in some of the hottest and most humid weather. We are very happy that this increased authorization is in this bill.

Finally, I know the chairman from New Mexico and the ranking member will work with us to put some real teeth in the freedom car proposal that the President has launched and I support. It is not strong enough in this bill, but, as I said, nothing will stop us from coming back and putting real time frames and real measures of success.

Mandates for hydrogen fuel cells in our Federal fleet could be added to this bill. But our clean schoolbus technology, some other things that are in this bill, make it, on balance, a very fine bill and one that this country needs.

Again, this is not a Democrat or a Republican bill. It is really a bill in which regional interests are at stake. But from the perspective of Louisiana and particularly in the South, places that produce a lot of energy, this bill gives us relief. It gives us hope that natural gas prices can be reduced. It produces jobs, and it helps us lower the unemployment rate as well as makes our country more energy self-sufficient.

For all of those reasons, I will give my vote and support to the bill.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island is recognized for 20 minutes.

MEDICARE

Mr. REED. Madam President, we are debating at the moment the Energy bill, but there is another major initiative that we are all considering. That is the Medicare bill. I would like for a moment to speak about the Medicare bill.

We have a history. For 38 years, Medicare has been a central part of the life of America, not just seniors in America but every American family. Now we are being asked to consider, in the waning days of this session, fundamental changes not just to the addi-

tion of a pharmacy benefit for seniors but fundamental changes to the structure of the Medicare Program. We are being asked to do so in the waning hours of this session of Congress.

What we have seen from the situation in the committee is that it was a period of negotiation between very few people, producing fundamental changes for our Medicare system. It is important, I believe, to look at some of the changes today.

Much of the discussion that has taken place in the conference with respect to this proposal has not really been how best to use the \$400 billion for pharmacy benefits for seniors but, rather, to make profound changes in Medicare, which I believe undermine, in the long run, the Medicare Program.

One could suggest that the original \$400 billion budget allocation for pharmaceutical benefits for seniors was too meager. But we could have addressed at least how to make that money go as far as we could rather than simply using it as, I believe, a subterfuge in some respects to make changes to Medicare that have been promoted by many—particularly conservatives—for years previously.

The purpose of S. 1 and H.R. 1 was supposedly to craft a pharmaceutical benefit. Indeed, what happened is much more profound and more pervasive and indeed will go to undermine our Medicare Program, not strengthen it. I have serious reservations.

We all recognize that seniors need relief. Again, the \$400 billion was a small part of the relief they need. It has been estimated by CBO that seniors will spend a total of \$1.8 trillion on pharmaceuticals from 2003 to 2012, the 10-year period this bill will likely cover. The \$400 billion, in context, is just a fraction of what seniors will pay. Nevertheless, we could have provided, I believe, much more focused, targeted, and beneficial relief to seniors than has been accomplished by this bill. More than that, we could have avoided these very serious and deleterious changes being proposed for Medicare.

Let me address a few issues. There is an issue in the bill that has been discussed, which is cost containment. It represents sort of a doublespeak, if you will. I believe if you asked most of my seniors about cost containment, they would say, hallelujah, finally, you are going to bring down the cost of the pharmaceutical drugs.

Wrong. In the language of this bill, cost containment is limiting the amount of money the Federal Government will contribute to the Medicare Program—not just pharmaceuticals but to the Medicare Program. In fact, if you look at what they have done with respect to the cost of pharmaceuticals they have made it very difficult for the Federal Government, through the Medicare Program, to negotiate lower prices.

Once again, if you asked any senior in this country, or any American, about cost containment, in the context

of pharmaceutical drugs, they would say it has to be the reduction in the costs charged to seniors, not a reduction of the contribution this Government will make for seniors. It has turned the whole notion of containment upside down, topsy-turvy. Again, it will go a long way not to help seniors but to continue the unchecked increases in pharmaceutical costs we have seen.

There are reasons for this. Frankly, everyone has to recognize that revolutions in pharmaceuticals have provided a higher quality of health care in the United States. But my expectation, and my hope, was that if we were talking seriously about a Medicare benefit for seniors with respect to pharmaceuticals, we would have been able to use the market power of a nationwide Medicare Program to control prices—not set them but control them through the marketplace.

A large number of beneficiaries, purchasers, could go to pharmaceutical companies, through the Medicare system, and negotiate prices, which represents the buying power of millions of seniors. That is not going to happen because, quite deliberately and consciously, this program fragments seniors; it creates regions where certain programs will vie for the business of seniors through the Medicare system. That is not going to control costs. Yet we are talking about cost containment, not in that context at all but in the notion of just limiting the contribution we will make.

Again, I think what we have to recognize is that this is not going to be the way to deal with the crisis we face today and the crisis of the years ahead.

There is a provision in the legislation which essentially says that as the Medicaid Program exceeds 45 percent of the general fund contribution—our contribution to Medicare exceeds 45 percent of total program expenditures, and then the President must submit a plan to Congress, and there is pressure for Congress to move. But that is a rather arbitrary and artificial way to approach the cost of Medicare.

First of all, it doesn't consider the number of beneficiaries. It doesn't consider other factors, such as quality issues. It is an arbitrary device which I think will not control the real costs, which is the cost of drugs, but it will really inhibit and hamper our ability to serve our seniors. Again, this is one aspect of the legislation that I find particularly troublesome.

There is another doublespeak, and that doublespeak is premium support. Again, if you asked any senior in Rhode Island, Michigan, or Maine about premium support, they would say: Hallelujah, you are going to help me pay my premium; I have been waiting for that. That is not the case. It is helping the private insurance companies by assisting them not only in their operating expenses but with their bottom line in the process. That is not what most people thought about when we talked about premium support.

It will provide wide variations of premiums throughout the country, State by State, and even within States, region by region. Essentially, it will also encourage cherry-picking, a term we are all familiar with, in which these private companies that are being encouraged to now go after the seniors' business will be able to structure their marketing and their appeals to take the healthiest, younger seniors, leaving the older seniors—the most vulnerable and most expensive—to be covered in the Federal program. This will be great for their bottom line, but it will drive the cost of traditional Medicare up and up, and it will run right back into the cost containment trap we set up.

Medicare will be less "efficient" than private plans. Therefore, it will be subject to increased Federal pressure to lower the cost. All of this violates a fundamental principle of insurance, which is that you pool risk by aggregating a range of risk. You don't segregate the healthiest people and say we will ensure just those—well, if you are a profitable private insurance company, you do. But if you are trying to plan for a national program to assist seniors, you certainly don't do that.

It also defies the fundamental facts of history. In 1965, when the Medicare Program was created, seniors could not get health insurance because they were expensive to insure. They were a bad risk. No private insurance company would step up in any systematic way to insure them—unless you were phenomenally wealthy and you could probably pay for all of your medical care out of your wealth. For the average senior, in 1961, 1962 and 1963, you were not getting private insurance. That is why we stepped in. That hasn't changed.

Seniors today are still, on average, much more expensive to insure than younger people because of the nature of life and nature of disease and morbidity—all of this. This legislative proposal totally ignores that 35 years of history and the experience we all have.

Again, going back to our experience, it was not uncommon when I was a youngster, teenager or younger, to visit homes of my friends and there was at least one grandparent there—a grandmother or grandfather. Why? Because their health needs required somebody to care for them. It was the families, the 40-year-olds, 35-year-olds. Much of that changed in 1965 because now seniors had the ability to obtain health care coverage.

This whole system is being threatened by premium support, which will incentivize private insurers to come in and attract and subscribe the youngest healthiest seniors, leaving the traditional Medicare Program with the older, most expensive population to cover; and, again, all of this is leading into that trap in which cost containment will tell the Federal Government, oh, stop, we are paying too much money for seniors.

I believe this is, again, a profoundly poor concept, and it is further com-

plicated and exacerbated by another aspect. We are creating a \$12 billion stabilization fund, again, for private insurers. We are taking Medicare money, the money which our seniors—in fact, all Americans believe we are earmarking for senior health care and setting up a fund—a slush fund—that will provide further incentives to private health care purveyors and further unbalance the playing field between traditional Medicare and these new private plans.

We could have done much with this stabilization fund. We could have lowered the so-called donut hole when benefits expire for some seniors and then renew themselves after several thousand dollars of additional expenses. We could have closed that gap. We could have done a lot of creative, innovative things that not only would have assisted seniors but would also make a real concerted effort to control the cost of the program in a principled way. Yet we didn't do that.

We have created a situation in which, again, the deck has been stacked against traditional Medicare and against, I believe, the logic of insurance of aggregating as many risks as possible across regions, across the country, across ages from the youngest seniors to the oldest seniors, the healthiest seniors to the ones who are sick and frail.

We are also going to hit and create a situation where we will give incentives to these companies to fragment the Medicare system. Frankly, if insuring seniors was a profitable area of endeavor, 35 years ago we wouldn't have had to step in and create Medicare. If it was a profitable endeavor today, we wouldn't have to have a \$12 billion stabilization fund, and we wouldn't have to have premium support.

We will spend more money than we have to and we will get less for our money and seniors will get less in terms of the benefits, not just pharmaceutical benefits but the overall Medicare Program. I emphasize again, this is not just trying to tailor and contain the cost of pharmaceuticals. This applies across the board.

Ms. STABENOW. Madam President, will my friend yield for a question?

Mr. REED. Yes.

Ms. STABENOW. I thank my friend from Rhode Island for laying out in a clear and concise way what our concerns are about this bill.

Madam President, wouldn't the Senator agree that our first goal should be to do no harm, rather than the items he is talking about? That the first goal of any plan to provide Medicare prescription drug coverage should be to make sure people are paying less and getting more coverage and getting more help? This bill doesn't do that, does it?

Mr. REED. I concur with my colleague from Michigan. Our first goal should have been to do what we told seniors for years we were going to do: help them buy pharmaceuticals, not

change, undermine Medicare but to help them buy pharmaceuticals.

We could have applied all that \$400 billion to do that. We didn't. We have stabilization funds to encourage private health concerns to compete with the traditional Medicare Program; we have health savings accounts, with billions of dollars there to encourage the insurance industry to sell health care plans to individuals. All of that very scarce money could have been used simply to say how much can we help the seniors to buy drugs and maintain our program. I agree with the Senator.

Ms. STABENOW. If I may ask another question, what the Senator is saying is there are billions of dollars being used in this plan on items that have nothing to do with helping pay for medicine, helping people get their care; is that right? The Senator is talking about billions of dollars going to HMOs, to insurance companies to help them compete against Medicare, which costs less, and that money could be used to buy medicine for people?

Mr. REED. The Senator from Michigan is absolutely right. I said this before. This represents, in some respects, the greatest bait and switch in the history of the Republic. Seniors think they are getting pharmaceutical protections, and they will wake up and discover the Medicare Program they thought was there forever has been changed irrevocably.

Indeed, even the pharmaceutical protection is not that extensive, comprehensive, or effective. The Senator's point about the cost of traditional Medicare is well taken. We already have experience with this. We have had the Medicare+Choice plans. These are private plans that are not able to provide a benefit as cheaply as traditional Medicare.

The 2003 Medicare trustees report estimated that reimbursement from managed care enrollees would exceed traditional Medicare costs. We are reimbursing HMOs more to care for their Medicare beneficiaries than we are through the traditional Medicare Program. We know that. That is 2003. That is the report of the trustees of the Medicare system. Yet we are still under this illusion that if we pour more money into the private HMOs through slush funds, through premium support—through all sorts of mechanisms—somehow we will change the reality.

We are not going to change the reality. The reality is that this general Medicare Program is efficient, is effective, it has stood the test of almost 40 years, and it is a system that I think every American sees as being effective, efficient, and, indeed, an important part of their family's well-being in the future as it has been in the past.

Ms. STABENOW. If I may continue with questions, when the Senator is saying this shifts money to HMOs and to insurance companies, I assume—at least my understanding of HMOs is—you don't choose your own doctor. We

are talking about seniors who now can go anywhere. I know in Michigan, they can go from the Upper Peninsula over to Detroit over to the west coast and the cost is the same. They can choose their doctor and go to the hospital they want.

Madam President, is it true that what Senator REED is talking about will take away people's ability to choose their own doctor and hospital?

Mr. REED. The Senator from Michigan is right again. Not only do you not have the ability to choose your own doctor, but sometimes it is the HMO that chooses you. We had the experience in Rhode Island of seniors signed up for HMO programs and the HMO said: We are not making enough money; we are leaving. They left the seniors high and dry. They found care by going back to the general Medicare system or another HMO. They found coverage, of course.

This is a one-way street. It is not a two-way street. You get to do what they tell you you can do. That is the way they make money. It is a profit-making enterprise. Frankly, there is nothing wrong with that, and if we were the managers of these companies, we might be pursuing the same techniques of carefully selecting our beneficiaries and questioning the doctors in every instance about whether this procedure is right or wrong. In fact, the greatest criticism of HMOs comes not from seniors but doctors. They can't abide working with them. It is accountants, not health care people, who are making the decisions.

We are setting this system up again. It is unbelievable, in some respects, that having had the experience of Medicare+Choice, having had the experience of a private insurance system that wouldn't touch a senior in 1965, and having the success of Medicare, we are entertaining these notions as if this is a good change, this is a good thing. We haven't learned.

This represents a triumph of aspirations or hope over the facts and reality of 30-plus years of experience and of the dynamics of the marketplace.

I thank the Senator from Michigan for her intervention because it has been useful in clarifying the discussion.

There is one other area that concerns me, and that is the notion of means testing. In the doublespeak of this bill, it is not means testing, it is income relating. It is like cost containment and premium support. It is income relating. It is really means testing.

What it does is it begins to lower the effective subsidy that the Federal Government provides the seniors based on their income. Frankly, starting off at a level of \$80,000—you may say, well, maybe it is not too bad; maybe people that comfortable should be able to pay.

The point is, it begins to add another way in which we will segregate participants in the Medicare system because if your subsidy falls from 75 percent, which is what it is roughly today, down to 20 percent, that will be wealthy

Americans, if this plan goes through, what it does is start raising questions: Why should I be in Medicare?

If I have to pay copays and I have to do this and I only get small support, why should I be in Medicare? A multiple class of health care is being created in this country. For all these reasons, I hope we have time to debate. I hope we have time to look at the legislation very carefully and not in the last few moments vote because time ran out.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I ask unanimous consent that Senator CLINTON be allowed to speak following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. STABENOW. I first want to again commend my friend from Rhode Island for his comments in laying out the concerns that many of us have. In thinking about this and thinking about my coming to the Senate, I came with a very important goal. One of my top priorities has been to help create a real comprehensive Medicare prescription drug benefit. Part 2 of that is to lower prices for everyone, for our seniors, so that the Medicare dollars, those precious dollars, can be stretched farther, but also for our businesses who are paying for very high health care costs.

We know about half of that is due to the explosion of prescription drug prices. So for businesses, for workers, for families, we have, I believe, an obligation to do everything we can to create more competition and more accountability to bring prices down. I came to the Senate with those two goals for health care for our seniors, as well as lowering prices for everyone.

Even though the bill that passed the Senate was not at all what I would personally have written, it had good bipartisan give-and-take. We passed a bill that I was willing to support in the Senate. Even though I believed it was just a first step, there was much more that could be done. We did include a strong bill to close patent loopholes and allow unadvertised brands, called generic brands, on the marketplace for better competition. We did create a low-income benefit that I believe was very good for seniors and a number of other provisions, helping our rural health providers, as well as all of our doctors and hospitals and other providers.

Now we are in a situation where, unfortunately, instead of the bipartisan effort that we came forward with in the Senate, we have seen a plan put forward primarily by only one side, and, unfortunately, one that goes way beyond the scope of any bill dealing with prescription drugs.

On the positive side, it does have positive provisions that can be pulled out if we choose not to move forward with this bill. I would hope in a bipartisan way we could pull out providing

for rural health, pull out provisions for our physicians who continue to be cut and threatened with cuts as they are providing care for our hospitals and home health and nursing homes. We can do that if we want to. We can pull that out and pass that. It is very positive.

When we look more broadly at this bill, it is not a comprehensive prescription benefit under Medicare. It is not even a good first step. As my colleague from Rhode Island said, it feels like bait and switch. We are talking about prescription drug coverage, and we are going to end up dismantling Medicare. We started out talking about: How do we help seniors pay for their medicine? How do we make sure folks are not choosing between food and medicine and paying the utility bill? How do we make sure we do not continue to have the explosion in prescription drug pricing that is affecting every part of our economy and every family in this country? That is what we started out to do.

Now we find ourselves in a situation where the fight that started to add a drug benefit to Medicare is turning into a fight to save Medicare as we know it, to save it as a universal health care benefit, the only one we have in this country.

I view this as a matter of values and priorities. I am very proud of the fact that in 1965, this Congress and the President of the United States came together and decided that we, as Americans, were going to say to those 65 and older and the disabled in this country that health care would be there for them; regardless of where they live, regardless of their situation, health care would be for them.

Now, what has happened? Well, we have seen the quality of life improve for older Americans. We have seen people live longer as a result of the benefits of Medicare. Those over the age of 85 are the fastest growing part of the older generation. Why? Because Medicare has made sure that health care is available, the doctor is available, the hospital is available, and so on. This is not a bad thing. This is a good thing. This is a great American success story that we should be celebrating together, not beginning the process of unraveling the promise of Medicare.

When I explain to folks what is before us, they look at me, frankly, like I am crazy. When we say, well, we have a deal for you; a quarter of Medicare beneficiaries would pay more for their prescription drugs under this plan, not less, not even the same but more. That is because 6 million seniors who are the poorest of the poor, who are on Medicaid, 6 million seniors who really are choosing between their food and their medicine would end up paying more under this plan than they would stay under Medicaid.

Another issue of particular concern to my State, up to 3 million seniors could lose their current coverage. In Michigan, I have a whole lot of folks who have worked hard their whole life,

sometimes giving up a pay raise to get good health care and to get a good pension. In fact, in my State of Michigan, it is estimated that 138,810 Medicare beneficiaries would lose their retiree health benefits under this plan. How in the world can that be a good idea? How in the world can we say to people, "We have a deal for you; you are going to lose your coverage as a result of this plan"? We started out saying we are going to put together a voluntary prescription drug benefit under Medicare, and now we are seeing a situation where people would actually lose benefits.

In Michigan, 183,200 Medicaid beneficiaries, the poorest of the poor seniors, will pay more for their prescription drugs than they need, and 90,000 fewer seniors in Michigan will qualify for low-income protections—90,000 fewer than in the Senate bill that we worked on, on a bipartisan basis, because of the assets test and the lower qualifying income levels.

I see my friend from Iowa, who I know has worked very hard on this legislation and who led the effort in the Senate that resulted in a bill that many of us embraced because it was a true, honest, bipartisan effort. I thank him again for that. This bill does not reflect what we did in the Senate. It does not reflect what we did on a bipartisan basis.

Unfortunately, even though hours and hours have been spent on this issue, we find ourselves in a situation where too many of the folks we represent will be worse off than they are now. That is of deep concern to me.

I am also very concerned that we are not seeing the competition put into this bill that would lower prices. When we talk about bringing prescription drugs back from Canada in particular, which is right next to my State of Michigan, that is something near and dear to me and the people I represent. It takes only 5 minutes to cross a bridge or a tunnel to go to Canada to bring back prescription drugs. Many of them are made in the United States. In fact, most of them are made in the United States, sold in Canada for 50, 60, 70 percent less, and then brought back.

In some cases they are prescription drugs that are made by American companies but actually manufactured in other countries—Lipitor, manufactured in Ireland; Viagra, manufactured in Ireland. They have a way to safely bring those back to the United States, working with the FDA and the companies. With a closed supply chain, they can do that.

There is absolutely no reason we cannot do that through our licensed pharmacists in the local drugstore or the licensed pharmacists in the hospital. There is no reason we cannot do that if we want to do that. It is just as safe. It can be crafted to be exactly the same, and just as safe, by allowing our local pharmacists to bring back these lower priced drugs to the local pharmacy rather than doing what is happening

today, which is too many folks getting in a car or a bus and going to Canada.

I do have concerns about folks going through the Internet more and more, or mail order where they are not working with a physician, not working with a pharmacist, and don't know the interactions of their drugs and may not know, in fact, where those drugs are coming from. That is something we ought to be tackling as well from a safety standpoint, but that is different from reimportation. That is different than giving licensed pharmacists the ability to do business with a licensed pharmacist in other countries and, in particular, Canada where their system is so much like ours in terms of safety.

I am very concerned that that provision is not in this bill, despite a heroic effort among House Members, a bipartisan effort to pass a bill that would do what needed to be done to create that competition.

Also, I am very concerned that we have a lessened provision in here relating to closing patents and allowing more generic drugs to compete on the market because those things would really bring prices down.

Although we have yet to see everything in final form, it is my understanding there is actually language that doesn't allow Medicare to bulk purchase, to negotiate on behalf of all of our 39 million seniors to get a big group discount to lower prices.

Essentially, on top of our poorest seniors paying more, those with coverage possibly losing their coverage, we are being told that our precious tax dollars and Medicare dollars are going to be forced to pay the highest prices for prescription drugs. In fact, because our uninsured pay the highest prices in the world, I think it is fair to say we would be paying the highest prices in the world for Medicare prescription drugs. That means the dollars are spread even thinner than they would be. In order for us to really spread these precious dollars as far as they can be spread, we need to bring prices down. This bill not only does not allow competition, it stops Medicare from group purchasing in order to bring the price down.

Thank goodness we don't include that language for the VA and our veterans. In the VA, we negotiate for our veterans for prescription drug coverage. We don't pay retail as the Federal Government. We don't pay retail. We get somewhere between a 30 percent and a 40 percent discount.

That is exactly what the pharmaceutical industry doesn't want to happen under Medicare, which is exactly why there is no competition in here. There is no ability to group purchase in terms of overall Medicare leverage.

This is a bill celebrated by the large pharmaceutical companies, because they know they are going to get a whole new group of folks, their customers, who will be locked into the highest possible prices.

I know they have a reason to celebrate. I understand. There are six drug

company lobbyists—probably more with this bill but at least six—to every one Senator. They must be celebrating. But I know the seniors of this country and the disabled, when they see what is really happening—unfortunately, it doesn't take effect until 2006 so they won't really be able to see what is happening until then—but once they see it, they are not going to be celebrating. They are, in fact, going to be very angry.

We can do better than this. We have to do better than this. There is no reason we can't come together, as we did when this bill was before the Senate, and work out something that makes sense. People are counting on us to do that. They are trusting us to do that.

Unfortunately, what is in front of us is much more about making sure we are protecting special interests than the people's interests. This is much more about HMOs and insurance companies and pharmaceutical companies than what seniors are going to be doing tonight when they decide if they are going to be able to have dinner or they are going to have to wait because they have to buy the medicine tomorrow.

We can do better. I hope we will. If what comes before us is what we have heard and what I have described tonight, I will strongly oppose it and do everything I possibly can to join others to oppose this and send this back to the drawing board.

I saw some numbers this morning of a poll done in the last couple of days of those 55 and older, describing this plan. It was interesting to me, of those polled, 65 percent who were members of AARP said: Go back and go to work and get it right. Don't pass this.

I agree with those 65 percent of the people. I know they reflect the people I represent in Michigan. I urge we go back to work and get it right.

The PRESIDING OFFICER (Mr. ALEXANDER). Under the previous order, the Senator from New York is recognized.

Mrs. CLINTON. Mr. President, this is a day of considerable activity around the Senate because we have two significant pieces of legislation that are drawing the attention of Members who come to this floor to express their opinions. It is hard to know where to start. There are significant problems and issues with both the Energy bill and the proposed Medicare bill. But because they have only recently been provided—with the Energy bill only in the last 24 to 48 hours finally being made available; with the Medicare bill still not being available in its full form—it is difficult to know what to say because, although we have the outlines of legislation, we don't have the full details, and we certainly don't have adequate time to digest and analyze these important matters.

So, I am sure that, like others, I am somewhat bewildered by the rush to deal with these two bills, to force action before the Thanksgiving holiday on such grave matters before our country.

I want to say just a few words about the Energy bill, and then I want to say a few words about the Medicare bill, because I think it is important that the country understand what is at stake with both of these significant changes.

With respect to the Energy bill, I am strongly opposed to it. I think it is bad for my State of New York and I think it is bad for our entire Nation. Yet I am very disappointed to find myself in this position where I feel compelled to oppose something called an Energy bill. There are provisions in this bill that are good, ones that I have worked on and have supported and am very pleased that they made their way into the final product.

Of course, after the August blackout, I wanted to do everything I could in my power to ensure that New Yorkers never had to go through anything like that again. I thought certainly in the face of a massive blackout that this body and our friends on the other side of Capitol Hill would rally together to take appropriate steps to increase the reliability of our electricity transmission and distribution system. What could be more obvious? The lights went out, and they went out because of failures and problems within that system.

Unfortunately, the Energy conference report did not get that job done, which to me is job one. I know the bill's proponents point to the fact that it includes mandatory enforceable reliability standards. I agree. Reliability rules are important. There should be mandatory rules with penalties, but those rules are not terribly meaningful if the entities that operate and manage the transmission system are unable to plan for and respond to crises. For that, you need a transmission system to be operated on a regional basis so responses can be coordinated on a regional basis and connected up to a national grid. At the very least, you need regional transmission organization.

What have we found out today? There has been a report issued about what happened to cause the blackout. Although details are not yet fully available, we know there were a number of causes for what happened to us on August 14. The fact is, no one appears in charge of the sprawling, heavily loaded, and troubled part of the transmission grid running around Lake Erie. A portion of the Midwestern grid centered in Ohio has long worried industry regulators.

The Energy bill that passed the House yesterday and which is now before us would create operating rules to lessen the risk of blackouts, but it does not overcome that region's fragmented line of authority where control is shared by 23 different power and transmission companies. The bill before us prevents the Federal Energy Regulatory Commission from setting up regional transmission organizations—so-called RTOs—that can effectively coordinate transmission on a regional basis.

If you are supporting this bill because you think it will prevent future blackouts, you had better take another look at the bill.

I start with this point because it is absolutely critical to my constituents and because there has been a lot of talk about how we had to move this bill because of the blackout. But how ironic it is that we move a bill which does very little to solve the problems that have now been analyzed and pinpointed as being at the root of what happened to us in August.

That is just one of many problems with the bill. I join many of my colleagues in expressing dismay about the MTBE provision in the legislation.

First, the bill provides a retroactive liability waiver for MTBE producers. This provision turns the so-called polluter-pay principle on its head. It basically says to communities from New York to California: Guess what; we may have contaminated your groundwater, we may have contaminated your wells, and we are not going to help you clean it up.

I heard some of my friends on the other side say: Wait a minute; it doesn't remove liability from people who negligently used MTBE. The fact is, there is no good use for MTBE. It is a contaminant. It pollutes water. Whether somebody poured it in fast or poured it in slow, the result is the same.

We don't know the full cost of these cleanups. I have read estimates that it could be on the order of \$29 billion nationwide. In New York, we are coming to grips with that kind of extraordinary cost, especially in light of the budget problems that we face.

Paul Granger, superintendent of the Plainview, NY, Water District, has provided estimates to my office about contamination on Long Island, one part of our State. But it is a beautiful part that has an underground water aquifer from which we draw water for Long Island. Mr. Granger estimates that testing the 130 supply wells known to be contaminated by MTBE will cost between \$990 million to \$1.4 billion. If you divide the 3.3 million Long Island population into that cost range, the MTBE drinking water cleanup costs will range from \$118 to \$315 per person. The cost impact for a typical family of four trying to make ends meet would be from \$472 to \$1,206 per family.

With respect to the Plainview Water District, Mr. Granger informs me that in the event that MTBE wellhead treatment is required at all of its facilities, the average monthly cost for water will jump by 49 percent.

As far as I can tell, this is another one of these unfunded mandates we like to pass around here. You have problems with water contamination directly caused by a contaminant that was manufactured by large conglomerates. They have deep pockets, and they could at least participate or contribute to helping to clean up water systems on Long Island, across New York, and across our country.

Well, you are out of luck. Is that fair? I don't think it is fair. I don't think it is fair to the people of Plainview, NY. But it is fair if you consider it along those terms for the MTBE producers.

Apparently, that is all that matters to the people who put this bill together. Maybe they don't have this problem in their States, although I have looked at the numbers. It looks as if all but 8 or 10 States are affected by MTBE. The costs associated with cleanup—where is money going to come from? Is this body going to pass on the billions and billions of dollars that are going to be needed to clean up our water systems across our country?

I can't imagine under our current budget situation that is a likely possibility. Therefore, what are we going to have happen? Once again, the taxes on local people will rise—again, another unfunded mandate just like special education, just like No Child Left Behind, and so much else that we passed in this body and then let somebody else pay for it.

New York City, which obviously has a very significant water issue, had been taking action to try to get some help in paying the bills and had sued the MTBE producers. Under this bill, their lawsuits are going to be thrown out of court.

I find it hard to understand why local governments aren't going to be permitted to protect themselves and to get the resources from the people who profited from producing and selling MTBE. I thought that is the way the system worked. Somebody said it is the trial lawyers. I don't think so. Mr. Granger in Plainview, NY, and the city of New York are trying to protect their water supply. Yes, they may have to go to court to do that. Why should they be prohibited in this bill from doing so?

As bad as the MTBE liability waiver is, the bill doesn't stop there when it comes to the MTBE producers. Unbelievably, the bill provides \$2 billion in grants to MTBE producers. What about grants for the water systems of our country? What about lending a helping hand to Plainview, NY, and all the other places in my State that are looking at tens of millions of dollars to clean up their water supply?

I can't understand how anybody can go home from this body and go back to wherever they represent and look into the eyes of their fellow citizens and say: Not only did we tell your mayor and your city council and your county leaders they couldn't sue, we are going to give \$2 billion to the folks who polluted your water but not a penny for you.

I wasn't on that side of this argument. Nevertheless, that is what is in this bill.

There are many other problems in this bill. The numerous rollbacks of environmental and health protections deeply concern me.

I hope we will be able to revisit those and try to figure out ways to avoid

turning the clock back on making our air cleaner, on helping people avoid the ill effects of pollution and contaminants in their emissions.

But there is so much else in this bill that, unfortunately, I believe will set us back. It is a shame because there are many ways this could have turned out differently, that we could have had the good provisions without so many of the egregious ones being put into this legislation.

I will now turn to the other issue we are confronting in the Senate. I don't see how we can deal with a Medicare bill of this significance at this time when, so far as my office knows, we still do not have the final bill as I came to the floor. We will have a lot of explaining to do to our constituents.

Every Member hoped we could get a bill to provide a prescription drug benefit for our seniors. They need it and they deserve it. I wish I could support this bill. Analyzing what we are able to find out and what the likely impacts will be leads me to conclude that not only will this bill not deliver on the promise of a drug benefit for our seniors but it will mean the slow, but steady unraveling of the Medicare system.

Let's look at some of the people who will be directly affected by this 1,100-page bill. I cannot avoid mentioning this is a long bill. I am not sure anyone has read it yet—maybe some staff person in the basement has read it all—but it is 1,100 pages. I remember another long bill 10 years ago, a bill to change the whole health care system, not just tinkering with Medicare and trying to provide a benefit.

A lot of our seniors are asking: What does this mean? Who can tell me what is in it? How will it affect me? On an individual level, that is an impossible question to answer. We do not know who is a winner or loser. My office is being inundated with calls from constituents, asking: I am a senior in New York City living on a small pension; what does this do for me? Or a widow in Buffalo, with high drug benefits: What does this do for me? We do not know yet.

Here is what we do know. At first glance, there are a number of groups who definitely lose under this legislation. The numbers in the groups add up to about 25 percent of all Medicare recipients, 10 million or so. This bill causes retirees to lose benefits they currently have. At least 2.2 million retirees will lose under this deal and over half of them have incomes below \$30,000. In New York, over 200,000 Medicare beneficiaries are likely to lose their retirement benefits.

As a result, my phones are ringing off the hook over this. People are saying: I have good benefits; I do not want this if it will take away the good benefits.

I have to say, honestly, based on my reading, the assessment on the numbers who will lose, I may even be a little conservative. Nevertheless, there will be a loss.

We could have done more to avoid having 2.2 million lose, but the conferees chose instead to spend \$12 billion on a slush fund for private insurers and \$6.8 billion on tax breaks that will undermine insurance coverage even beyond Medicare.

It is fair to say this bill threatens benefits that people already receive from their employers. There is no argument it is going to take that reality and turn it into something other than what it is. It is a bitter pill to swallow.

This bill also threatens to reduce drug coverage for the 6 million people who are eligible for both Medicare and Medicaid. I have spoken about the so-called dual eligibles before because they are the people about whom I am most concerned. They are the lowest-income, sickest Medicare beneficiaries. Many rely on Medicaid right now for drugs because Medicare does not cover drugs. This bill bars Medicaid from providing drugs not covered by the new Medicare plan. That is a departure from the practice for all other Medicare benefit gaps. This will affect nursing home residents, people with disabilities, and the truly indigent nationwide. We estimate it will affect 440,000 in New York alone.

If we look at the New Yorkers who are eligible for both Medicaid and Medicare, right now they can get access to any drug they need and they can access most any pharmacy. This bill will increase their copays, limit their choice of drugs, and restrict the pharmacy network.

HIV/AIDS patients are particularly affected since this bill only requires coverage of two drugs in any class. HIV/AIDS patients need multidrug cocktails that may require more than two such drugs and often require very specific medicines that are prescribed for their condition. Some drugs they might take or have taken for a period of time could eventually encounter resistance within their bodies. For those patients, this provision on dual eligibles does a grave injustice.

The millions who currently receive coverage through State prescription drug assistance programs, such as the one we have in New York called EPIC, are also at risk. In New York, over 400,000 seniors, nearly a quarter of our Medicare beneficiaries, rely on EPIC, which does not have a formulary and often offers better coverage than what a senior will be able to get under this bill. The compromise in the bill puts seniors in EPIC at risk of a new formulary, higher copays than they have now, and places limitations on the pharmacies they can use. It will force the New York Legislature to change the law and the design of EPIC, assuming they even want to continue it.

I have also asked that seniors who will either have to disenroll from the current EPIC plan or will have to enroll in two plans to continue to qualify for drug coverage be given a grace period so they are not penalized if, in the confusion and disruption of this transi-

tion, they do not understand what they have to do to continue to get whatever State program is available because they have to sign up for a new Medicare benefit program to continue with EPIC.

I recently heard from the people who are finalizing the bill that the new formularies, limitations on pharmacies, and higher copays will not only affect seniors in State prescription programs but also veterans who depend on the VA and members of the military in TRICARE, many of whom currently pay very low and in some cases zero copays. Again, the millions who have coverage throughout these programs will be worse off than they are now.

What about the issue of premium support? For those 6 million seniors affected by the premium support experimental demonstration, overall Medicare premiums will increase yet again; this time, as the price of privatization.

MedPAC has studied this issue and found that private plans cherry-pick. That means they pick the healthiest seniors to be in their plans. That is how they make a profit. If you are insuring the healthiest people, you do not have to pay as much money as if you insure people who are not so healthy. Therefore, they try to attract the healthiest beneficiaries. That way, they get a big payment for those healthy beneficiaries and they, frankly, do not have to pay much out when it comes to beneficiaries needs.

The GAO has said the population is so much healthier that the Medicare+Choice plans are now overpaid by 19 percent when one considers the health condition of their beneficiaries.

If fee-for-service has to compete and it is the only plan willing to continue to serve the sickest and costliest patients, anyone who wishes to keep their regular fee-for-service Medicare will see their cost rise, probably up 5 percent each year. But who knows how high that percentage will go in the future? Ultimately, the 6 million seniors across the country who are going to be put in the demonstration experiment will pay more just to maintain their Medicare benefit.

This is not just an academic exercise for me because New York is likely to be one of the States with residents chosen for this experiment. Our seniors will be used as guinea pigs, so to speak, in the rush to try to in some way prove that Medicare, which has the most cost-effective delivery system, which has provided a guaranteed benefit that is the same across the country now for nearly 40 years, is somehow inadequate and unable to really deliver the goods. So we are going to see what happens when over 500,000 New York seniors who reside in areas that could be chosen for premium support are thrown into that mix, and told that you are just going to have to pay those higher prices, and just shovel that money out the door to the HMOs and other health insurers that are going to be standing there with their hands out.

But the bill does not just create a radical scheme for Medicare; it really does take aim at our whole system of insurance by the inclusion of these so-called HSAs. They used to be called MSAs, medical savings accounts; so now I guess they are health savings accounts. The new name does not change the fundamental problems with these proposals.

By promoting these accounts, these provisions will allow wealthy and healthy seniors to get tax benefits. But it would also mean increased premiums of as much as 60 percent for those who wish to keep their current private insurance.

To arm the enemies of Medicare, there is a so-called cost containment provision which designates an arbitrary cap on Medicare. We are bound to hit that cap as the baby boomers age. Once we hit it, that guarantees that current Medicare benefits will be on the chopping block year after year. So I have to send out a big warning to everybody on Medicare, but also to those like me who are not that far away from Medicare, that we are looking at the dismantling of this program, and we are moving back toward a survival of the richest and the fittest.

Now, considering all those harmed by the bill, you would think we would be getting a generous drug benefit out of all of this. Well, in fact, we do not. Many seniors will be paying more out of pocket for drugs under the skimpy benefit in this proposal than they are now without any so-called drug benefit at all.

Every single senior in this country will pay more out of pocket than they do now for doctor services in 2005. That means that before the drug benefit even starts, seniors will be hit with increased cost-sharing. Seniors can expect a 10-percent increase in their Part B deductible right away, and yearly increases after that for the first time in history. Those increases are pegged to grow at a rate faster than seniors' Social Security checks.

In addition, the drug premium may be \$35 a month, on average, but it increases so quickly that seniors will be left paying more and more for little additional benefit.

As we know, this bill creates a new insurance structure where seniors will continue to pay premiums for part of the year even though they are receiving zero benefit at the same time. Now, I don't know. I don't think we have ever passed an insurance plan in this country where you are told you have to pay all year but there are going to be a few months in the year that you don't get sick, don't get hurt, don't have an accident because you will be out of luck.

There is not an insurance commissioner in this country who would gladly allow such an insurance policy to be marketed in their State. Yet here we are. Seniors will pay premiums, even in the so-called gap months, when they have no benefits.

Then the \$35 premium goes up to \$40, and then nearly doubles, reaching \$60

by 2013. I think that is a burden for seniors if the benefit they return is not guaranteed all year, every year, and if it, in and of itself, may not even meet the cost they put into the system.

I have heard from some analysts that the break-even point for seniors in this bill is \$835. Now, 40 percent of seniors spend less than that on drugs each year. According to the analysis I was given, this bill will actually represent a net loss to 40 percent of our seniors if they join. That is a lot of seniors. We are talking about 16 million or so. They will end up paying more in costs in premiums than they receive in returns. So when all is said and done, this is a bill that decreases some people's benefits, eliminates other people's benefits, and costs more to many.

I think history has demonstrated the political repercussions of such experiments that go right to the heart of what people value the most; namely, their health.

But now, even though there are many losers in this bill, I want to be fair. There are also some winners. They are many industries and some individuals. But there are winners. A recent study found this bill will give drug companies a \$139 billion windfall. Because there is no cost containment in the bill, the drug companies are assured of their profits.

Furthermore, the health plans—already overpaid 19 percent compared to what Medicare is paying for seniors in traditional Medicare—will receive another 7 percent on top of that in addition to the \$12 billion slush fund in this bill.

Now, there may be some help in this bill for some of the 12 million or so Medicare beneficiaries without any kind of drug coverage—not through Medicaid, not through Medicare+Choice, not through the VA, not through TRICARE. They simply do not have it. Maybe some among those 12 million might be winners but only if they make it through a thicket of confusion and hit a moving target.

Because, let's face it, this is a very complicated bill. It is going to be very complicated to implement. I remember hearing a lot of complaints about that bill of 1,300 pages, the Health Security Act back in 1994, and that dealt with the entire health care system, not just with seniors.

Now, all signs show this bill is not seeking to add prescription drugs; it is seeking to change the whole health care system. I have to give them credit, they got it to 200 pages less, so that is some accomplishment.

I think we ought to look at what is going to be facing seniors as they try to make decisions about their health care.

What I have done is to take the tales of two seniors, to look at what the differences would be, and what a typical senior would face when trying to determine what they could have under this bill.

The first tale concerns a retired small business owner in New York City, an urban senior. Now, this senior

has many choices in the first year, 2006. He looks at his choices. He has PPOs and HMOs and private drug plans and Medicare. He has choices. So he takes a look at his choices and decides to stay in traditional Medicare. He picks the private, stand-alone drug plan with the lowest premium of \$35 a month.

He gets into that plan.

Then he discovers, too late, that his drug that he has been taking for a few years is not on the private insurer's formulary. So even though he has had bad side effects from the drug that is listed, he has to go through a lengthy appeals process. Although he eventually wins his battle with the private insurer, he has had to pay out of pocket for the drug in the interim.

So suppose what he is suffering from is, let's say, diabetes—a very common disease among our seniors. In the process of trying to get on the right drug, trying to pay for the drug he has been on, he is locked into this plan and he cannot change until the next year.

Now, let's go to year 2, 2007. So let's say the private drug insurer plan the senior was in has dropped out of Medicare, which happens all the time because its low premium, the \$35 a month premium, could not sustain enough profit. But our elderly gentleman does not mind because he wanted to switch anyway. He did not want to stay in that drug plan because they did not treat him well.

So he chooses another private drug insurer and he pays a higher premium. This time he decides to go with a more expensive premium, thinking he is going to get more of what he needs. He pays \$50 for drug coverage on top of his now \$79 Part B premium. But he makes absolutely sure his drug for diabetes is on the plan's preferred drug list and he can continue to see his doctor.

During the year, however, the private insurer changes its formulary—there is no rule that says it cannot—so that his drug gets assigned a higher coinsurance amount. Although the plans can change what they cover during the year—it can be the old bait and switch: Sign up with us. Your drug is on the formulary; and 6 months later, no, it is not—the senior cannot get out of the plan until the year is up.

So year 3, our senior does the math. This is a man who has really been working on this. He has spent a lot of his waking hours trying to figure out this maze of so-called benefits.

To stay in traditional Medicare, he will pay the monthly premium of \$83 in 2008, plus at least \$50 for prescription drugs, in addition to relatively high co-payments. The private insurer he was with has dropped out. If he joins an HMO, he can pay \$75 for base Medicare coverage, plus \$42 for prescription drug coverage. Now he is up to \$192 a year extra to stay in regular Medicare, and he has to worry about whether or not the private drug plans are going to change on him again as they have in the past.

You could make this even worse because suppose that the HMO plan no longer recognizes his doctor, and if he joined he would be stuck again for another year. It just goes on and on. I am not looking forward to explaining this to my 84-year-old mother. We are going to have to set up a whole gigantic bureaucracy of individual case counselors to try to explain to seniors what this all adds up to. And this maze, this totally confused picture, is what is available in an urban area where at least there are choices for seniors. Let's look at what happens to a woman who lives in upstate New York.

Let's pick an 85-year-old widow who has had a stroke. She hasn't had drug coverage before. She has lived on a Social Security payment and a small pension from her late husband. She took regular trips across the border to Canada, though, because we are lucky in upstate New York. We can just go right across that border, or we used to be able to go right across that border. She could afford those drugs because they were a lot cheaper, and they were absolutely the same drugs. She takes five different drugs on a daily basis.

In the first year, 2006, no private HMOs or PPOs plan to come to her town. She is up in the north country, up near the Adirondack Park. For anybody who has been up there, it is really beautiful. It is isolated, and it is really rural. She loves living there, and she wouldn't live anywhere else.

Well, she has never had any of these private plans in her community before, and she doesn't know what is going to be available to her. So two of the new private drug-only plans are offered. One has monthly premiums of \$60; the other has monthly premiums of \$50. The lower premium plan has a complicated set of copayments that tends to be higher, when you add it all up—assuming somebody helps you figure out how to add it all up—than the higher premium plan. But she goes ahead and chooses the \$50 plan, and she sees some relief. But she calculates that with annual drug costs below the catastrophic benefit, she is still not getting a very good deal because for her, she is still paying about 70 to 80 percent of what she had before.

Now year 2—and this happens all the time in rural areas, as we know—the private plan drops out of Medicare. That is a common experience for rural residents. So Medicare must provide a fallback plan. This plan seems quite good to our widow. She pays \$5 less than what she paid in the private plan the previous year, and her prescription drug benefits are covered. But year 3 the local papers announce that the payment rates for HMOs, which are 30 percent above the local cost of traditional Medicare, have finally attracted an HMO to the area. Remember, we are pumping all this premium subsidy out there. We have billions and billions of dollars to entice folks to come to the North Country and other areas.

Well, this creates a dilemma for our senior because she now has to deter-

mine with whom she can go and who is going to take best care of her because if the HMO comes, maybe it will attract some competition. And let's say that another private drug-only insurer shows up. Medicare is providing bonuses to private plans who come to the area. So as a result, remember, even if it only lasts for just a year, even if it doesn't have your drug on the formulary, even if it no longer is affordable for you, once you have two competing private insurers, there is no fallback plan as an option. So the senior faces the so-called choice of monthly premium increases of \$24 to stay in traditional Medicare or just \$1 more per month to join the HMO. Given that this difference is \$288 a year, it is not even a choice. That would wipe out her annual increase in Social Security benefits.

She feels forced to go into the HMO. She loses her doctor, she loses the drug that she needs, and she has to go through an appeal. I can guarantee you, there is not going to be a lot of appeals courts in isolated areas like the North Country. So it is going to take a while even to go through this. Now this 87-year-old woman is having to fight for, litigate for, argue for the drug her doctor says she needs, or her former doctor, because she can't go to him anymore because there is no affordable regular Medicare fallback. So she is stuck with one of these two private plans. Here today; gone tomorrow.

The lesson I draw from this is whether you live in a rural or an urban area, your choices are tilted toward enrolling in HMOs and PPOs. I think that is a shame.

Medicare's strength, a reliable system of coverage and predictability, will have been replaced by a complex, insured-driven, cherry-picking system. There may be some seniors who will be helped under this bill. I hope I am healthy enough when I reach that age that I am not going to be disadvantaged by whatever we have in place, but I find it hard to explain how we could end up with a bill that is so much narrower, so much more uncertain than the bill that received a majority of votes in the Senate last year, the Graham-Miller-Kennedy bill.

Among those who might gain under this bill, they are not only small in number, they don't even know who they are. I asked seniors this morning at a big meeting: Who among you knows for sure that you won't get hit by the fine print in the bill? How many of you really believe you are winners under this bill? Don't you wonder why nobody is really telling you everything you need to know to be an informed citizen, to make a decision in your own mind that you can then tell your elected officials what you think should be done?

We are on a course to passing a bill where no senior watching or listening to this debate is going to be sure that he or she will be helped. We have pushed it past the next election so the

full burden of trying to figure it out won't really fall on anybody until 2006. And if you look at this chart, it is kind of hard to draw any other conclusion. If you are a retiree, you would have no idea of knowing whether your former employer will keep you or drop you. If you are poor, you be poor enough to get coverage under Medicaid. And if you are, you may no longer get all the coverage you need for your needs. If you are sick, will you be sick enough to be covered under Medicaid, and under this bill will Medicaid really cover your particular health care needs? If you are in a nursing home, are you going to be really left to fend for yourself in a nursing home in a State prohibited from providing Medicaid wraparound funding. And your health needs will compete with those of children and other needy people? If you are in a State prescription drug program, you will pretty likely be a loser as well. If you are in the premium support guinea pig category, good luck, because I think you will see that you are going to have an amazing obstacle course to try to run.

I must say many of the obstacles confronting our seniors are triggered by decisions we have had made for us in this conference that was quite small in number and exclusive in membership and came out with a product that is going to be very hard to defend. It will be particularly hard to defend if we look down the road and we see the threats to Medicare on the horizon.

I have heard colleagues say—and I respect this—that this bill is not perfect, but it is all we could get. I understand that perspective. There is good and bad in every bill. I don't think since I have been here I have voted for a perfect bill or voted against a totally bad bill. I understand that perspective. I am grateful this bill does take steps to help our rural and small community hospitals to resolve some of our teaching hospital issues and to address the absolutely compelling physician payment issues. We should be addressing those important matters, but not in the context of a bill which will further undermine the program providing the capacity for hospitals and doctors to provide decent care at an affordable cost.

This bill has too many flaws for us to go forward. The privatization scheme that is tied into this bill, in a box with a big bow saying prescription drugs, is one that will make structural changes to this program which has been the bedrock of protecting our seniors and guaranteeing them the health care they have needed.

So I hope we can still salvage this bill. I hope we can still try to keep faith with our seniors. I think we should postpone dealing with it beyond the forced deadline of right before Thanksgiving, so that everybody has a chance to read and evaluate it.

But if we are required to go forward, then I certainly cannot be a party to a bill that I think will undermine health

care for our seniors, fail to provide the benefit that is advertised, and lead to the slow and steady unraveling of Medicare, which I consider to be one of the great achievements of our country in the 20th century.

On behalf of the hundreds of thousands of seniors I represent, who are definitely losers under this bill, I have to respectfully request that we go back to the drawing board, that we try once again to do a job on a bill that will really help our seniors, and that we not take steps that will undermine the guarantee of health care under Medicare.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, is there a time agreement?

The PRESIDING OFFICER. There is not.

Mr. SESSIONS. Mr. President, I don't think we are rushing into the prescription drug bill, nor are we rushing into the Energy bill. We have been wrestling with those bills for an interminable period of time—years. They have been up and down and debated and discussed, and conferees have worked their hearts out on these bills.

We are spending, on prescription drugs, an additional \$400 billion. I don't believe anyone is going to be hurt by this effort. AARP has reviewed this bill and they support it. They would like it to spend even more, but they are supportive of this bill as a historic effort.

There is no doubt, with regard to prescription drugs, that there is the potential to provide the poor in this country, many of whom this very day are choosing between food and drugs that they need for their health, with prescription drugs essentially for free, up to 150 percent of the federal poverty level. A huge percentage of the seniors in this country are going to have access to necessary prescription drugs, virtually free, under this bill.

If there is any problem with it, I suggest that maybe we have done a bit too much, that we could have been somewhat more restrained and focused less universally on this bill. But conferees debated it and it is a bipartisan effort by Democrats and Republicans in both the House and the Senate. Now we have a bill and we will have to see how it goes.

I hope to be able to support it because I told my people in Alabama that I wanted the people who could not afford drugs to have them paid for. This change does, fundamentally, make sense. At the present time, we pay for your surgery, we pay for your heart operations, but we will not pay for the drugs that we know will help prevent a heart operation. We will not pay for the drugs that could avert the need for a kidney transplant, but we will pay for the kidney transplant. It is an odd thing.

I will take a few moments to talk about the MTBE question. It is a matter that has become a big point in the

debate on the Energy bill. Frankly, I think it is a bit overdone. Some senators have said that if a company makes a product, the company ought to pay for it if their product causes damage. But that is not true. That is not the law in America.

That is not classical American liability law, tort law. As a matter of fact, it is an indication that this Congress and this country is losing its discipline on what is a legitimate basis for a lawsuit.

You can say, well, they made MTBE and it got into the water system in this community; therefore, the maker of MTBE ought to pay for it. They say that is what the law ought to be and they ought to pay.

Would somebody say Folgers should be responsible if a Folgers brand of hot coffee burned somebody in a McDonald's restaurant, or that McDonald's should be liable? If somebody takes a can of Campbell's soup and smashes a guy on the head with it, is the maker of the can of soup liable? Certainly not.

Let me share a couple of things. After 9/11, we realized we were facing a situation in which airlines had suffered a dramatic loss of ridership. Somebody woke up and said: Wait a minute, they are going to sue the airlines for 9/11. Why? Well, maybe somebody was asleep at the switch when a terrorist got by, so we can sue them. They think the airlines have a lot of money and they can pay for everybody and everybody will make lots of money. We can attach liability to them.

Congress, in considering that, passed legislation that would compensate the victims in New Jersey and their families for \$1 million or \$2 million each. As a consequence of that, they would waive liability claims against the company. The airlines' planes were seized, commandeered by terrorists. In truth, in the history of America, under classical law, the airlines are victims just as much as the owner of the Trade Center towers is a victim. We are in a situation in which the lawsuits in America, having eroded classical constraints on them, too often are successful in suing whoever is standing around—whether they have any real liability or not.

I think about the gun liability question. There are over 60 Senators, including Democratic Leader Tom Daschle, who support legislation to protect gun manufacturers, under certain circumstances, from liability. Why? Because cities and other groups, for political reasons, are suing the gun manufacturers because someone used their gun and committed a crime with it.

Well, under the classical rule of law—and I used this defense in one case—a person is not responsible for an intervening criminal act. The gun manufacturers make a gun that does what it is supposed to do. You aim it and point it and a bullet hits something or somebody. That is what the gun is supposed to do. The Federal Government passes legislation about how and to whom you

can sell a gun, under what circumstances. They have to sign a statement, and there is a waiting period. They have to certify that they are not a drug addict or they have not been convicted of a felony. Then they can buy the gun, under certain circumstances. States have even more rules, and they comply with that. But they want to go further. They want to sue the gun manufacturer because somebody took a legal product, sold according to Federal law, and used it for a crime. They want to sue the gun manufacturer because I guess they think the gun manufacturers have a deep pocket of money. That is not what we ought to be about.

The MTBE was essentially a Government requirement over a decade ago. It is an oxygenate. It was produced and it did what we required to be done in order to improve air quality in America. The EPA could have stopped it if they had wanted to, but they never stopped utilization of it. It was encouraged. It was passed by Senator DASCHLE, who introduced an amendment that required it to happen. Everybody knew MTBE would be the product utilized more than any other product as an oxygenate to meet the environmental regulations.

So you say, well, if they put it in the water system, they ought to be liable. Right, if they put it into the water system, they ought to be liable. But if they didn't put it in the water system, they ought not to be liable. It is getting into water, but not because it is burned in the engines and goes through the environment and settles into the water. The argument is that some water aquifers are being polluted with MTBE as a result of leaking from tanks and from pipelines and matters of that kind.

It is legitimate, fair, legal theory that if a manufacturer of MTBE allowed its pipeline to leak or allowed the storage tanks to leak and the chemical got into the water system, then you can sue him. That is what we ought to be doing.

As I understand the language in this bill, it does not prohibit that kind of lawsuit. If you allow it to escape negligently into the system, then you are liable. That is what classical American law is all about. That is what it has always been about. However, it has never been about the producer of a substance being liable for pollution if somebody else takes it and dumps it into the water system of America. How ridiculous can that be? The person who dumped it in the water system is the one who ought to be liable and ought to pay.

As I understand the language in the bill, that is all that it says. You have to be the one who was responsible for letting it get into the water system. Maybe it is a local gasoline distributor who has a bunch of old tanks that leak and that person allowed it to get into the water. Is a manufacturer somewhere that didn't have any contact

with this company liable for the leak? Certainly not. If we have any legal discipline left in this country, certainly not. But that is where we are heading.

I also know there have been a good many problems with leaking tanks in this country. There is a big trust fund—I believe there is \$2 billion in that fund—in case the gas station or the small gasoline distributor has gone bankrupt, doesn't have insurance, or doesn't have any money. What happens then if some of these even more dangerous chemicals, certainly more dangerous chemicals than MTBE, leak? Who would pay? This fund will pay.

The point is, Shouldn't we make sure we are thinking clearly about this issue? What is wrong with having within this legislation language that affirms a classical understanding of liability? That is what it is all about.

Companies get nervous. You get a water system that has some MTBE in it, which is not a cancer-causing substance, it is not a disease-causing substance, according to every report I have seen. If enough of the substance gets into the water, it will have a bad taste and unpleasant smell, and it is bad—we don't want it in our water system—but it has not proven to be any kind of significant health hazard, to my understanding—

Mr. GREGG. Will the Senator yield at that point?

Mr. SESSIONS. Yes.

Mr. GREGG. Has the Senator been in a home that has MTBE pollution?

Mr. SESSIONS. No, I have not.

Mr. GREGG. I suggest the Senator—Mr. President, I ask the Senator a question—I suggest the Senator might want to go to a home with MTBE pollution before the Senator makes the representation the home is livable.

Mr. SESSIONS. I didn't say the home. I understand the water smells. Is the Senator aware of any report that says MTBE is a cancer-causing substance?

Mr. GREGG. I didn't suggest that MTBE was cancer causing. The Senator suggested it is not a health hazard. I ask the Senator, if a person cannot live in their home, is that not a health hazard? If a person cannot take a shower, is that not a health hazard? If a person cannot drink the water, is that not a health hazard?

Is that the Senator's position, that if you cannot live in your home, if you cannot shower, if you cannot drink the water you, therefore, do not have a health hazard? Is that the Senator's position?

Mr. SESSIONS. The Senator's position is this—if someone polluted your water so you can't drink it, and did so to the required degree of negligence and liability, they are responsible for it and should pay.

The question is, What if you didn't do anything that justifies a lawsuit? What if you had no connection whatsoever? You made MTBE and somebody takes it and pollutes your house with it. Who is responsible? I can tell you what the law has been historically in America.

Mr. GREGG. Will the Senator yield for a further question?

Mr. SESSIONS. The person who caused the action, made the house uninhabitable, that is who should pay; not the person who made the substance.

Mr. GREGG. Will the Senator yield for a further question?

Mr. SESSIONS. Yes.

Mr. GREGG. Is it the Senator's position that if a person cannot use their house, cannot use the water, cannot take a shower, that person should be barred from suing the potential people who are responsible for that and that a State that has brought an action on that issue should have a law passed by the Congress which says that action brought by that State will no longer be in existence?

Mr. SESSIONS. Two questions there. One is the existing lawsuit question. The Senator makes a legitimate point and expresses a legitimate concern. Frankly, I am not sure it is fully meritorious, but he certainly raises a legitimate concern.

The second point is, Who should be responsible? That is the question. That is all, as I understand it, this legislation deals with.

If this legislation were to say that the person who is responsible for putting the MTBE in a New Hampshire citizen's home was not liable, I would oppose it. But if they took asphalt and dumped it in somebody's home, should the asphalt maker be liable if they were not responsible for putting it in that home? That is the legal question with which we are dealing.

Mr. GREGG. Will the Senator yield further?

Mr. SESSIONS. I yield.

Mr. GREGG. Is it, therefore, the Senator's position that the determination of whether or not the person who polluted the water in that home which is no longer livable, can't take a shower and can't drink the water, that the person who seeks redress on that should have the Congress unilaterally decide that a product which appears to have a fairly significant proximity to the problem should no longer be subject to liability simply because the product has been designed in a certain way, and that it should be the Congress—many Members of Congress never having even been in that home or a home of a similar nature—that should eliminate the capacity of that individual to have redress in a lawsuit? Would it not be a court's decision or jury's decision to make the determination if the product was produced without defect, that product should not be liable rather than the Congress unilaterally deciding that product should not be liable?

Mr. SESSIONS. I thank the Senator for the question. I think it is a good one. I just hosted and chaired a hearing on the question of restaurants that sell food that might cause obesity. The question is, Is a restaurant that makes a good cake responsible for somebody's obesity? They made the product that

perhaps made the person overweight and obese, but they are not responsible for it. Should Congress act?

I think it is perfectly appropriate and fair that the Congress set the rules for litigation in America. We established when the statute of limitations runs. We established a lot of rules. In fact, we established basically that MTBE should be used. It was a congressional action that required this to be done before I arrived in the Senate.

I don't know how the Senator from New Hampshire voted on that legislation. It was a good Government environment bill at the time. Senator DASCHLE, I believe, was the prime sponsor of it.

The question is this, Companies make a substance. Somebody else spills it in the environment. Now we are going to have the person who made it, because maybe they have good insurance, pay for cleaning up any place in America that this stuff was spilled? I don't think so. Of course, we have in this bill liability protection for ethanol, and the House stuck in the liability protection for MTBE. It really was not considered in the Senate, I admit, but I think it is appropriate we follow through with it. At least I believe there is a strong justification for it. I don't believe this bill should be blocked on that basis.

Mr. TALENT. Will the Senator yield for a brief question?

Mr. SESSIONS. I will be delighted to yield.

Mr. TALENT. I wonder if the Senator's position isn't similar to mine, on the point the Senator from New Hampshire raised, that we at least should not refuse to vote on a bill that could mean millions of jobs for everybody in the country in all sections of the country because of one provision in the bill which could perhaps be fixed or compromised in some other legislation. I wonder if that isn't the Senator's position.

Mr. SESSIONS. I think that is a very good point. I know a number of Senators who favor this bill said they would be open to consider reforming it on a short basis if there was any abuse. Any language of this kind deserves to be carefully examined. I understand New Hampshire has filed a lawsuit that might be prohibited by this legislation, so I can understand the Senator from New Hampshire being concerned about that.

From what I understand, if the fundamental principle in the legislation appears to be sound, I can be supportive of it. If, in its application, it is unfair and unjust, I would be prepared to support reform.

Mr. TALENT. I thank the Senator for yielding for a question.

Mr. SESSIONS. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Missouri.

Mr. TALENT. Mr. President, it is a real pleasure for me to come down and speak on behalf of the Energy Policy

Act. I want to begin by congratulating those involved in the conference committee who reached an agreement upon it.

I saw my friend, the senior Senator from Iowa. He certainly did yeomen's work on behalf of a provision that is very important to us in Missouri: The renewable fuel standard, as well as the biodiesel tax credit. I am going to begin my brief remarks and end them by commenting on those provisions. They stand to create hundreds of thousands of jobs in the short term around the country and in the long term have the potential not just to revolutionize family production by bringing in a whole new wave of value-added enterprise but also help create energy independence for this country.

As we have said on this floor on many occasions, when we are able to grow our own fuel, by growing corn, by growing soybeans, and turning them into fuel that we can burn in our cars, it just revolutionizes international relations in the world and also helps the environment and protects the economy as well. This bill is a major step in that direction. For that reason alone, I think it deserves to be voted on and passed.

There are provisions in this bill, as the Senator from North Dakota said before in his very eloquent remarks, that all of us would pick out or change if we could. But this is one Energy bill that this Congress has had to write for a very diverse country. I would suggest, when we are trying to come out of a recession, when we are trying to create jobs, when we are trying to achieve energy independence for this country, now is the time for statesmanship, not obstruction. Now is the time for compromise rather than confrontation over discrete points of a very big bill. Now is the time to move forward with all the good parts of this bill that we know are going to create jobs, that we know are going to help create energy independence, that we know are going to be good for the environment, with a view toward getting together afterward and helping to fix or reform the parts of the bill about which we may have some doubts. I hope we can do that. I hope we can get a vote on this bill.

I hope in particular that we will not see that weapon, the filibuster, hauled out to stop us from even expressing an opinion on the first national energy policy that this Congress has ever really passed.

We have heard much discussion in the last week or two about the importance of jobs. I very much believe in that. We cannot do anything we want to do in this country, we cannot do education, we cannot have health care, we cannot have defense, we cannot have opportunity without prosperity, and we cannot have that without jobs. This bill flat creates jobs. It will protect hundreds of thousands of jobs against being lost. It will create nearly a million. The natural gas and coal provisions, which are not those over

which Missouri has a parochial interest but which I strongly support, would create more than 400,000 direct and indirect new jobs just through the construction of the Alaska natural gas pipeline, which will at the same time bring affordable energy to the lower 48 States, 38,000 direct jobs, 80,000 indirect jobs, an estimated 400,000 jobs from the multiplier effect. The investment the bill provides for in clean coal technology creates 62,000 jobs; 40,000 construction jobs created by the construction of approximately 27 large new clean coal plants.

When we use this clean coal technology and we make coal environmentally safe, we secure America's energy future because we have hundreds of years of reserves of coal. There is no reason not to move forward so as to create the possibility of reliance upon that even more greatly in the future, if necessary.

The renewable fuel standard I will discuss in a few minutes. Nuclear energy, building a first of its kind nuclear reactor to co-generate hydrogen will create 3,000 construction jobs and 500 long-term high-paying, high-tech jobs. I toured the nuclear energy plant in Missouri in Callaway County just a few weeks ago. It is the wave of the future. We can have more nuclear energy plants like that securing energy for our people around this country. This bill is a key to achieving that.

Some examples of job losses that the Energy Policy Act will prevent in the future, these are job losses we have had in the past: The Potash Corporation, one of the world's largest producers of fertilizer products located in Northbrook, IL, and Canada, that spends \$2 million per day on natural gas, has announced layoffs at its Louisiana and Tennessee plants.

Economists predict that Louisiana's chemical industry will lose more than 2,000 jobs in the next 2 years. I have had people come and visit me from the chemical industry saying they are being forced to push jobs offshore because of the high cost of energy. I have had manufacturers in Missouri tell me that the high cost of energy and the unpredictability of the cost of energy is driving jobs offshore. It does not have to be that way. We can have an energy policy that encourages all different kinds of energy—the traditional forms, the alternative forms. This bill does that.

No, the bill is not really liked too much, if I may so, by those on the extreme ends of either part of the political spectrum. There are some who do not want the Government involved at all, even in stimulating the production of supply of energy. There are others who for other reasons on the other side of the spectrum do not want the private market to be stimulated for the production of energy. But Americans are out there, Missourians are out there, worrying about the loss of their jobs, worrying about what opportunities are going to be available in the fu-

ture. Access to affordable, stable supplies of energy of all kinds is a key to this country's prosperity and independence, and that is what it comes down to.

Those of us on the Energy Committee, on both sides of the aisle in the Senate, have had that target in view from the minute that we began writing this bill. The Senator from Tennessee is certainly well aware of that because of the major part that he played in it.

I close by talking about the special importance of the renewable fuels section of this bill. Everybody back home is so pleased that we have recognized in this Congress, by an overwhelming margin, the importance of ethanol and biodiesel to this Nation's energy supply. The bill will increase ethanol production and the use of ethanol throughout our national economy to 5 billion gallons by the year 2012. It will create 214,000 jobs, \$5.3 billion in new investment in renewable fuels production facilities. The biodiesel tax credit of a dollar is groundbreaking for the production of biodiesel in this country. With this tax credit, we can expect biodiesel, in just a few years, to be in the same situation that ethanol is now, and a few years after that the situation that ethanol will be in in the future, one of the mainstays of energy production. These are a key to value-added enterprises as well.

I will never forget on a day I was traveling around central Missouri and I talked to some corn farmers and they were talking about commodity prices. They were pretty depressed, and there has been a lot of reason to be depressed about prices of corn in the last 2 years. They did not really see a lot of hope. These were great producers, efficient producers, but they knew even if prices crept up, one change in the international situation might push them down again. Then I went to the ethanol plant in Macon, the same kind of producers, but these were investors in the ethanol plant. One of them pulled me aside. There was an air of optimism there, an air of energy. One of them pulled me aside and said: Jim, the good thing about this is when the price of corn goes down, I just make more money off the ethanol. That is what value-added enterprises mean to family production in this country.

If we lose family farmers, if we lose the family production sector in this country, we lose something that we cannot recover, the values that go with an attachment to and a belief in the land. Value-added enterprises, of which the chief is renewable fuel, is the future for family producers. It is the future for energy independence in the country as well.

We are proud in Missouri, as I know the Presiding Officer is proud in Minnesota, of the leadership role we have played in the production of ethanol. We expect to have a leadership role, we do, and expect our leadership role to grow in the production of biodiesel. That is what this bill provides for.

I close by saying that although there are many parts of the bill that are going to help Missouri, there is no question about that, and I am enthusiastic about it, I am pleased to have participated in writing a lot of the bill, and pleased to vote for it, there are many parts of it I like. This renewable fuels section is really important to Missouri. Agriculture and tourism are the two biggest parts of Missouri's economy.

This bill is a joint effort. I think it is idle for any section of the country or any group of Senators who want a particular kind of energy to believe that they can get what they want for their section of the country, or that they can get what they want for the kind of energy supplies that they favor apart from a bill like this that helps everybody pull together. We cannot unravel this thing and pass a bunch of different bills. It is not going to happen. We are one country. We have to rely on many different sources of energy, but it has to be one policy. We have to have it all in one policy. It is not going to be perfect, but it is going to make a difference for the future. To the extent that it is not perfect, we can work on it.

I would so much rather have a view of legislation that says, look, we would rather go ahead knowing that we will take what is good and we can work on the things that we are concerned about than stopping everything because we cannot achieve that perfection given the state of human nature and the realistic possibilities in which we have to operate.

I am going to be pleased to support this bill. I urge Senators who have greater doubts than I do, or maybe who have themselves dug in on one issue or another, to try to work out an arrangement with the bipartisan group of Senators who have pushed this bill for so long. I know the Senator from New Mexico is ready to talk. The leadership is ready to talk. I am hopeful we will see the leaders on both sides of the aisle supporting this bill.

Now, as I said before, is the time for us to pull together and send a clear signal to this country that we can and will pass a comprehensive national energy policy that will create a stable and affordable supply of energy for years to come and allow our entrepreneurs, our manufacturers, our farmers, our small business people, to move ahead with the predictability that a stable energy supply gives them.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. CANTWELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNEMPLOYMENT INSURANCE EXTENSION

Ms. CANTWELL. Mr. President, I know we are still under consideration

of the Energy conference report and many Members have been to the floor talking about the prescription drug conference report as well.

Before we adjourn, whatever date that is, sometime in the very near future, hopefully before the Thanksgiving holiday, it is imperative that this body take a stance and pass the unemployment benefit extension before we go home.

We are in the same position we were in virtually a year ago. What has changed? The economy might have gotten slightly better but not really much better. We have a .4 percent improvement in the unemployment rate. We in Washington State are still just above 7 percent in unemployment.

The reason we do the unemployment benefit extension program at the Federal level is to help States, which includes those that have been hardest hit by unemployment, get some extra weeks of unemployment benefits. It has been a successful program in the times of downturns of our economy. During the first Bush and Clinton administrations, when our economy was not doing so well, we basically extended Federal unemployment benefits for a total of 30 months. At that time, the benefits were at the Federal level, 20 additional weeks.

We are at this point in time now where we have extended the Federal program in this recession for about 22 months. Yet while we have seen a slight economic improvement, as I said, .4 percent, I believe it is not enough to continue the improvements we would like to see in our economy.

In an economic downturn, make no mistake about it, working Americans would rather have a paycheck than an unemployment check. But giving people an unemployment check in times of tough economic situations helps our economy overall. Every \$1 spent on unemployment benefits generates \$2.15 of stimulus. That is mortgage payments paid, health care bills that are met, a continuation of the economy at the most stable level we can have when we are not seeing job increases.

It is vitally important, before we adjourn—we have spent all this time debating judges and there was a good debate on both sides—we get back to some of the basic issues that need to be accomplished before we adjourn. Certainly unemployment benefits, I believe, should be that priority.

What is going to happen in December if we adjourn sometime next week—this program expires at the end of December. What is likely, if that happens, is we will see 90,000 people at the national level fall off this benefit program and as many as 2 million people in the first several months of the year could be without unemployment benefits.

Like many of my colleagues, I hope the economy improves. But I don't think we are seeing an indication it will improve that rapidly that soon. To leave these people without benefits at a

time when we could be stimulating the economy is irresponsible.

For Washington State, the numbers are similar. We have about 200,000 people in Washington State who will exhaust their benefits in the first 6 months of 2004. I would rather those people be receiving some benefits and having the certainty of receiving those benefits now, even if it is a shorter extension period.

The challenge we ran into last December as we bantered back and forth—and, actually, the Senate did the right thing in the eleventh hour by passing the unemployment benefit extension; the House decided not to act on it. What happened was we left many Americans without certainty of the unemployment benefits.

Some of my colleagues believe nothing happened, that when we got back in January we reconstituted that program and people did not lose a thing. That is not true. I know constituents who made alternative plans, not knowing whether Congress had the intention of extending the unemployment benefit program. There was not the certainty. I had constituents who took money out of pension programs with 30 percent penalties, basically trading off their long-term investment for short-term return because they did not think we were going to extend benefits.

We ought to give working Americans some certainty that as this economy continues to struggle, we are going to be there with unemployment benefits.

My colleague from Nevada has cited several times that many Members of Congress voted to terminate this program. In the 1990s, after we had the 30 months of an extension of employment benefits by both the Bush and Clinton administrations, and after we had a 1.2 percent improvement in the unemployment rate, yes, we curtailed that program. However, we are doing less now, less under more severe economic conditions, than the first President Bush and President Clinton did during that time period. They went for 30 months. They had a Federal program that was 20 weeks instead of the 13 we have now, and they only curtailed the program once they saw a better return to the economy.

I encourage my colleagues to put this bill on the priority list for the next several days. Let's figure out a way to give unemployed Americans some certainty as they face the holiday season. Let's give those millions of people who are going to be impacted by not having this Federal program continued some relief and know we will be also holding up our economy. Let's not say to people that this Congress went ahead and passed tax cuts for the wealthiest of Americans, did a variety of things that may have been targeted tax credits, but failed to extend to hard-working Americans the unemployment benefit program into which they have paid.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate proceed to legislative session

and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance; that the Senate proceed to its immediate consideration; the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. On behalf of the majority leader, in my capacity as a Senator from Minnesota, I object.

Ms. CANTWELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

Mr. FRIST. Mr. President, we have had a full day of debate on this very important conference report. We have had a number of Senators come to the floor in support of the bill and others who have used this as an opportunity to highlight their opposition to one aspect of the bill or another. The bill finally establishes a comprehensive energy policy, and I do urge my colleagues to look at the bill not just piece by piece but in its entirety. Chairman DOMENICI had to negotiate a whole range of tough issues to put together a bill that requires a very fragile balance, as people even more fully understand this and come to the floor to address different aspects of the bill.

I understand there are some Members who want to preserve their rights on this legislation and who don't want to allow a time limitation. But given the importance of the legislation, at this juncture I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate to the conference report H.R. 6, the energy policy bill to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

Bill Frist, Pete Domenici, John Cornyn, Mike Crapo, Larry Craig, Ben Nighthorse Campbell, Michael B. Enzi, Mike DeWine, Christopher Bond, Robert F. Bennett, Trent Lott, Pat Roberts, Jim Bunning, Mitch McConnell, Richard G. Lugar, Norm Coleman, Conrad Burns.

Mr. FRIST. Mr. President, this cloture vote will occur on Friday of this week unless changed by unanimous consent. I hope that cloture is invoked and that the Senate can then act expeditiously to vote adoption of the conference report. Until that time, Mem-

bers will be allowed to come to the floor to express themselves with regard to this legislation. We encourage them to do so.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

IN MEMORY OF RUTH BURNETT, MAYOR OF FAIRBANKS AND BE- LOVED STAFF MEMBER

Mr. STEVENS. Mr. President, my heart became heavy with sadness as I learned this weekend of the death of my close personal friend Ruth Burnett.

Ruth Burnett was not only a person who gave me great support as the manager of my Fairbanks office, she, her husband Wally Burnett, Sr. and I became friends 50 years ago after my family and I moved to Fairbanks. As the years went by, we kept in touch and from the days of my earliest Senate campaign Ruth and Wally supported me.

Ruth's time as mayor of Fairbanks brought us even closer together and I was delighted when Ruth agreed to be my representative in Fairbanks. She worked tirelessly, without regard to office hours. And she was responsible for bringing to our attention the plight of thousands of interior Alaskans so that my staff and I in Washington, DC could try to help them. She gave me many ideas on where to send Federal money in the interior so that we could do the most good for the most people.

Ruth's whole family pitched in to support her. Wally Burnett, Jr. was a leading member of my Washington, DC staff and the Senate Appropriations staff. Public service has been a hallmark of the Burnett family—a family with a great Alaskan tradition.

Ruth will be dearly missed, but her spirit will live on through the great family she leaves behind and through the many lives she touched.

HONORING OUR ARMED FORCES

Mr. KENNEDY. Mr. President, in these difficult days when the brave men and women of our Armed Forces face such great dangers in Iraq, we continue to mourn the losses of our heroes who gave their lives in past wars. One of those heroes is Major Richard W. Cooper, Jr., of Holyoke, MA, and his loss is very much in our minds now. Major Cooper was a navigator aboard a B-52 bomber from Westover Air Force Base. He was on one of the final bombing runs in the Vietnam War in 1972, and his plane went down on December 19 of that year. He has been listed as Missing in Action ever since. The Air Force never gave up the search and re-

cently, his remains were discovered and identified through the Joint Task Force Full Accounting operation in Vietnam. Next month, on December 19, at long last, 31 years to the day after his final mission for our country, Major Cooper will be laid to rest with full military honors in Arlington National Cemetery.

Major Cooper earned many decorations for his loyal service to our country, including the Distinguished Flying Cross, and we honor his great courage. Our Nation has often called its sons and daughters into harm's way, and their families bear the scars of battle forever. America owes an enormous debt of gratitude to Major Cooper and his family, and our thoughts and prayers are very much with them now. Massachusetts is proud of him and so is our country.

Mr. WARNER. Mr. President, I seek recognition to honor a Virginia Soldier, CWO Sharon T. Swartworth, who was tragically killed in action in Iraq on Friday, November 7, 2003. I want to express gratitude, on behalf of the Senate, for her service to our Nation. The American people, I am certain, join me in expressing their prayers and compassion to her family.

CWO Sharon T. Swartworth entered the Army shortly before her eighteenth birthday, her father signing the papers allowing her to enlist early. "She traveled around the world before she was assigned to the Pentagon." She understood the importance of her present assignment and despite the personal risk, wanted to serve the United States and the people of Iraq during this critical time.

A warrant officer of the Judge Advocate General's Corps, she served as the primary adviser to the judge advocate general on all matters concerning legal administrators in the Army. She was temporarily in Iraq to process awards for deserving soldiers and to ensure the legal needs of soldiers were being met.

CWO Sharon T. Swartworth leaves behind: her son, William III; her husband, William, a captain of the Naval Medical Corps; and her father, Bernard Mayo.

I, among many friends and colleagues, attended the ceremony at Arlington Cemetery. Her family, who has borne this tragedy with dignity, are brave souls who have sacrificed so much for this Nation. We owe them and the other families who have lost their loved ones a debt of gratitude.

She was an exceptional woman with a bright future and family in front of her. Her father related, "She did it all, and we can be proud of her. She was a soldier." I can not craft a finer eulogy. The Commonwealth of Virginia and the entire Nation shall mourn her loss.

Mr. JEFFORDS. Mr. President, I was deeply saddened to learn yesterday of the death in Iraq of another of Vermont's sons. LT Pierre Piche of Starksboro, VT was one of 17 brave young soldiers who died in the crash of two Blackhawk helicopters last Saturday. This brings to five the number of